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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~566~~ ~~887~~ 44 ~~44~~ 5

THE CITY OF NEW ORLEANS, APPELLANT,

vs.

THE NEW YORK MAIL STEAMSHIP COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 30, 1871.

Oct Term 1874

SUPREME COURT OF THE UNITED STATES

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1 Circuit court of the United States for the fifth circuit and district of Louisiana.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Petition for injunctions.—Filed April 18th, 1866.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The petition of the New York Mail Steamship Company respectfully shows and states that your petitioner is a corporation incorporated under the laws of the State of New York, and domiciled in, and a citizen of, the State of New York; that the city of New Orleans, hereinafter named, is a political corporation, domiciled in, and a citizen of, the State of Louisiana.

That the said city of New Orleans, on the eight' day of July, A. D. eighteen hundred and sixty-five, by a contract in writing hereto annexed and made part of this petition, leased to your petitioner for the period of ten years, at a rent of eight thousand dollars per annum, the following-described property opposite Jackson Square, in said
2 city, viz: "All that portion of the landing on the Mississippi River extending from the upper line of the space now allotted and set apart for a ferry-landing, opposite to St. Ann street, in the second district, for a distance of six hundred feet (600) up stream, by a dept' of two hundred feet from the front line of the wharf, according to a plan on file in the office of the city surveyor, which plan is herewith identified with this act by me, notary, and marked 'Ne varietur;' but in no event shall the line fronting on Levee street be changed."

That, under said contract of lease, the right was granted to your petitioner to hold and occupy said premises for the term of ten years from the said eight' day of July, eighteen hundred and sixty-five, and to construct, build, and for the same term maintain and occupy a new wharf in front of said premises, and keep the same enclosed during said term.

That all and singular the stipulations and undertakings made and entered into in said contract of lease on the part of your petitioner have been faithfully performed, and they now have lawfully the
3 rights hereinbefore specified, as well as all those in said contract of lease granted.

That having at that date of said lease entered upon, and ever since remained in the possession of, said premises, under said lease, your petitioner has enclosed the same, and has thereon constructed and built certain buildings, and sheds, and wharves, at an expense of eighty thousand dollars, or thereabouts, and is now in occupation of said premises and buildings so enclosed for the purposes specified in said lease; that the city of New Orleans is about to, and unless prevented by the order of injunction of this court will, remove and tear down said enclosure, and buildings and sheds upon said premises, to the great injury and damage of your petitioner, as your petitioner is informed and believes, and have already commenced removing and tearing down the same.

That, by reason of the interference of said city with the possession of your petitioner of said premises, and the removal by said city of said buildings and enclosures, your petitioner has already suffered
4 damages to the extent of twenty thousand dollars.

Wherefore your petitioner prays that the said City of New Orleans may be cited to answer this petition, and that this petition verified, and the bond, in an amount to be determined by this honorable court, being considered, that an order of injonction may be issued by this court prohibiting and enjoining the said City of New Orleans, and all their agents, employees, officers, and surveyor, and all contractors and sub-contractors from removing said enclosures, buildings, sheds, and wharves, or any part thereof, and from in any way interfering with the same or any part thereof, or from in any way interfering with or disturbing your petitioner in the exclusive occupation of said premises until the further of this court, and that your petitioner may have judgement; that said order of injonction, as above prayed for, be made perpetual, during said term of ten years, from the eight' day of July, eighteen hundred and sixty-five, and that said City of New Orleans be condemned to pay to your petitioner the sum of twenty thousand dollars damages suffered as above set forth, and for all general and special relief in the premises just and equitable.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Petitioner.

5 STATE OF LOUISIANA, *Parish of Orleans, ss:*

J. M. Courtenay, being duly sworn deposes and says, that he is the attorney-in-fact of the New York Mail Steamship Company in the above petition named, and that the allegations contained, and the fact' stated, in the foregoing petition are true.

(Signed) J. M. COURTENAY.

Sworn to and subscribed before me this 18th April, 1866.

(Signed) F. B. VINOT,
D'y Cl'k.

Order.

Let the injonction issued, as prayed for, upon the plaintiffs, the New York Mail Steamship Company giving bond, conditioned according to law, in the penal sum of ten thousand dollars, with good and solvent security.

April 18th. 1866.

(Signed) E. H. DURELL,
Judge.

Lease annexed to petition.—Filed April 18th, 1866.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that, on this eight' day of July, A. D. eighteen hundred and sixty-five, and the eighty-ninth of independence of the United
6 States of America, before me, Andrew Hero, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and official notary for said city, personally came and appeared the honorable Hugh Kennedy, mayor of the city of New Orleans, and herein acting in his said capacity; and the said mayor aforesaid, declared that, by virtue of the authority in him vested by resolution No. , signed by the chairman of the bureau of finance, and the chairman of the bureau of streets and landings, adopted on the eight' day of July, one thousand eight hundred and sixty-five, a true copy of which is hereto appended for reference, he does by these presents contract and agree, in the name and on behalf of The City of New Orleans, with the New York Mail Steamship Company, a corporation chartered under, and in accordance with, the laws of the State of New York,

and herein duly represented by Asahel S. Mansfield and John M. Courtenay, by virtue of a power of attorney executed by James A. Raynor, president of said company, before Sylvester Lay, a notary public for
7 the city and State of New York, under date of the twenty-eight' day of April, eighteen hundred and sixty-five, and hereto annexed for reference, as follows, to wit:

First. The right is hereby granted by said city of New Orleans to said New York Mail Steamship Company to enclose and occupy for their own exclusive use and benefit for and during the space of ten (10) years from the date of this agreement all that portion of the landing on the Mississippi River extending from the upper line of the space now allotted and set apart for a ferry-landing, opposite to St. Ann street, in the second district, for a distance of six hundred (600) feet up stream, by a depth of two hundred feet from the front line of the wharf, according to a plan on file in the office of the city surveyor, which plan is herewith identified with this act by me, notary, and marked "Ne varietur," but in no event shall the line fronting on Levee street be changed.

Second. The said New York Mail Company shall, at their own cost, construct and build a new wharf in front of the landing hereinbefore designated, with new bulk-heads to retain the levee earth-
8 work throughout the whole extent of the front assigned to them aforesaid, they supplying all the materials and labor of the same; and the said New York Mail Steamship Company moreover contract' and agrees to keep the same in complete order' and repair until the expiration of his lease, and to deliver the same, in good order and repair to the city authorities at the termination of this contract, the natural wear and tear of the same only excepted.

Third. The said New York Mail Steamship Company shall have the right, at their own costs and charges, to construct such buildings and sheds within their said enclosed space, as may be required for the transaction of the regular shipping and freighting business of the company, and for the accommodation of the ships and vessels belonging to them, or running in connection therewith; provided, however, that said buildings and sheds be constructed in accordance with existing ordinances relative to buildings within fire limits, and shall be covered with iron or slate roofs.

Fourth. It is expressly stipulated that the wharfs herein men-
9 tioned, are to be completed within one year from the date of this agreement, in a proper and workmanlike manner, and of new materials, to be well protected by a line of heavy fender-piles in front, of sufficient size and strength to enable the largest ships (of a company) to land and load at the wharf without damage. The whole of said improvements of wharves, fender-piles, bulk-heads, sheds, buildings, and enclosures shall be kept in good repair by the company, at their expense and charge up to the expiration of this lease.

Fifth. The said New York Mail Steamship Company shall have the right to avail themselves of the use and application of steam-power, so far as the same may facilitate their business in the more convenient loading, unloading, and storing of freight and cargoes on board of their vessels, or of any ships or vessels used or chartered by them, and to construct and employ on the premises herein lease' such engines and machinery as may be necessary or convenient for such purposes.

Sixth. The lease shall not be transferred by the company with-
10 out the written consent of the mayor of the city, and in case of default on the part of the company to perform their engagements, as herein stipulated, according to the true intent and meaning thereof,

The City of New Orleans shall have the right to annull this lease and take possession of all the improvements made by the company in the space assigned to them as aforesaid. It is further that, at the expiration of the term of this agreement and contract of lease, all the improvements, wharves, bulkheads, sheds, and buildings, remaining on the premises leased shall become the property of The City of New Orleans without payment of any consideration for the same.

Seventh. The said company shall abstain from asserting any claim for wharfage or levee dues from any sailing, steam, or other sea-going vessels not owned or chartered by them, and all such dues chargeable to vessels landing at or using the wharves herein leased to the company shall be collected by the city; providing also, however, that in case of any such vessel owned or chartered as above shall proceed to any other part of the port to load or deliver cargo, such vessel so load-
11 ing or delivering cargo shall pay the usual wharfages, whether owned by the company or not. It is also further agreed that the company shall allow no Mississippi River or other river steamboat or river craft to unload merchandize at their wharves, for reshipment on the company's vessels, or other vessels, or for sale here, nor shall any Mississippi steamboat or other river craft receive cargo at the company's wharves for reshipment or for sale here.

Eighth. The consideration to be paid by the said company for the lease herein granted by The City of New Orleans and all other rights and privileges incident to the agreement as herein stipulated shall be the payment of a rent at the rate of eight thousand dollars ($8,000) per annum, payable in monthly instalments by notes, for which the said company shall execute their promissory notes in due form, and, in case of default in making their payments punctually, The City of New Orleans shall have the right to annul said lease, and take possession of the premises and improvements without payment thereof, without applying to a court of justice.

Ninth. It is agreed that the city shall not be responsible to the company for any damage that may happen to the property of the
12 company in case the ground shall cave or sink into the river.

Tenth. If at the expiration of this lease those who may at the time represent The City of New Orleans, shall deem it proper to continue the landing and property therein leased for the use herein contemplated and not to appropriate the same to other uses, then it is agreed that the New York Mail Steamship Company shall have a preference as lessees for a renewal of the lease over other applicants offering the same terms for such period of time as may then be agreed upon.

Eleventh. The lease granted by The City of New Orleans to the present lessees on the ninth of January, 1864, is hereby superseded and set aside by this contract and agreement of lease, and after the date hereof, the present agreement taking effect in its place and stead.

Twelfth. It is further agreed that, in case the company shall be obliged to remove the buildings and enclosures constructed by them on the levee, by reason of any action of other parties than the city, the company shall not have the right to demand damages in consequence, from the city of New Orleans.

The United States internal revenue is paid and cancelled, as
13 per stamp, for the sum of one hundred and sixty dollars annexed to original act on file in my office.

This done and passed in my office at the city of New Orleans, in the presence of Charles Frederic Barry and William McC. Jones, competent

witnesses who have signed their names with said parties and me, notary.

(Original signed)

HU. KENNEDY, *Mayor.*
A. S. MANSFIELD.
J. M. COURTENAY.
W'M McC. JONES.
CH'S F. BARRY.
ANDREW HERO, *Not. P.*

A true copy of the original.
(Signed)

ANDREW HERO,
Not. Pub.

Bond for injunction.

Know all men by these presents that we, New York Mail Steamship Company, by J. M. Courtenay, attorney-in-fact, as principal, and A. S. Mansfield as surety, are held and firmly bound, jointly and severally, unto The City of New Orleans in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to The City of New Orleans and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs,
14 executors, and administrators, firmly by these presents, sealed with our seals, and dated the eighteenth day of April, in the year of our Lord eighteen hundred and sixty-six.

Whereas the New York Mail Steamship Comp'y has this day presented a petition to the honorable the circuit court of the United States for the 6th circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of temporary injunction for the purposes therein set forth:

Now, the condition of the above obligation is, that we, the above-bounden The New York Mail Steamship C'y and A. S. Mansfield, will well and truly pay to the said City of New Orleans, the defendant in said injunction, all such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained.

NEW YORK MAIL STEAMSHIP CO., [L. S.]
By J. M. COURTENAY, *Attorney.*
A. S. MANSFIELD. [L. S.]

Signed, sealed, and delivered in presence of—
F. B. VINOT, *D'y Clerk.*

Filed April 18th, 1866.
(Signed)

CH'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Injunction.—Issued April 18th, 1865.

15 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

The President of the United States to the City of New Orleans, all their agents, employees, officers, and surveyors, and all contractors and sub-contractors, greeting:

Whereas it has been represented to us in our said circuit court, on the part of the New York Mail Steamship Company, by their petition lately exhibited against you, to be relieved touching and concerning certain matters

and things in said petition contained: Now, therefore, in consideration of the premises and the allegations in said petition contained, you, The City of New Orleans, your agents and attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing the enclosures, buildings, *shades*, or wharves, or any part thereof, and from in any way interfering with the same or any part thereof, from in any way interfering with or disturbing the New York Mail Steamship Company in the exclusive occupation of or on the premises opposite Jackson square in said city, known as the landing of said company, including all that portion of the landing on the Mississippi River, extending from the upper line of the space allotted and set apart for a ferry-landing, opposite to St. Ann street, in the second district of the city of New Orleans, for a distance of 600 feet up stream, by a dept' of 200 feet from the front line of the wharf, which premises were leased to the said company by the said city on the 8th day of July, 1865, as more fully set forth and described in the said petition, until the further order of our said court.

16

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 18th day of April, A. D. 1866.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received April 18th, 1866, and, same day, month, and year, served a copy of this writ of injunction on The City of New Orleans, the defendant named herein, by leaving said writ in the hands of George Clark, acting mayor of the city of New Orleans, at the office of said mayor, in the city hall of this city. Returned, New Orleans, April 18th, 1866.

17

(Signed) M. EGAN,
D'y U. S. Marshal.

This document, with marshal's first return, received in the U. S. marshal's office, May 18th, 1866, and on the same day, month, and year served a copy of this writ, and the marshal's first return thereon, on John T. Monroe, mayor of the city of New Orleans, personally, at his office, in the city hall, in this city.

New Orleans, May 19th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Injunction.—Issued April 18th, 1866.

UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

The President of the United States to the city of New Orleans, all their agents, employees, officers, and surveyor, and all contractors and subcontractors, greeting:

Whereas it has been represented to us, in our said circuit court, on the part of the New York Mail Steamship Company, by their peti-

18 tion lately exhibited against you, to be relieved touching and concerning certain matters and things in said petition contained: Now, therefore, in consideration of the premises, and of the allegations said petition contained, you, The City of New Orleans, your agents and attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing the enclosures, buildings, *shades*, or wharves, or any part thereof, and from in any way interfering with the same, or any part thereof, or from in any way interfering with or disturbing the New York Mail Steamship Company in the exclusive occupation of or on the premises opposite Jackson square, in said city, known as the landing of said company, including all that portion of the landing on the Mississippi River extending from the upper line of the space allotted and set apart for a ferry-landing, opposite to St. Ann street, in the second district of the city of New Orleans, for a distance of 600 feet up stream, by a depth of 200 feet from the front line of the wharf, which premises were leased to the said company by the said city on the eight' day of July, 1865, as more fully set forth and described in the said petition, until the further order of our said court.

19 Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 18th day of April, A. D. 1866.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received April 18th, 1866, and forthwith proceeded to the New York Mail Steamship Company's landing, in front of Jackson square, in this city, for the purpose of serving this writ on the employee' of The City of New Orleans, the defendant named herein, then suppose' to be engage' in tearing down the wooden enclosure, the property of the plaintiffs in this suit, but found no laborer or officer of the said city at said place, as the whole enclosure was already torn down—the sheds, office, and a few of the piles of the fence alone left standing. Writ return' not served.

New Orleans, April 18th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

20 You are hereby commanded to summon The City of New Orleans, a political corporation, domiciled in, and a citizen of, the State of Louisiana, to comply with the demand of the New York Mail Steamship Company, a corporation incorporated under the laws of the State of New York, and domiciled in, and a citizen of, the State of New York, contained in the petition, of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the

service hereof, or judgement will be rendered against it by default; which delay is increase' one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of May, 1866.

Witness the honorable Samuel P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 18th day of April, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth year.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

Marshal's return.

21 Received April 19th, 1866, and, on the 19th day of April, 1866, served a copy of the within citation, and plaintiff's petition for injunction accompanying the same, on the City of New Orleans, the defendants named herein, by leaving said documents in the hands of Geo. Clark, esq., acting mayor of said city of New Orleans, personally, at the office of said mayor, in the city hall of this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *April 20th*, 1866.

Answer of defendant.—Filed May 7th, 1866.

Circuit court of the United States for the sixth judicial circuit, eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS.

The defendant, The City of New Orleans, now comes into court, and for answer to the plaintiff's petition, denies all and singular, the allegations therein contained; and, for further answer, your respondent denies the existence of any contract as in said petition pretended.

Respondent further avers, if any such contracts exists, that the same is null, void, or of no effect, because it was not made by persons
22 or persons authorized to bind the said city, because Hugh Kennedy, pretending to act as the mayor of the city of New Orleans, had no right or authority to bind, encumber, or alienate in any manner or way any part or portion of the real estate of said city, or to part with, dispose of, or lease any of its rights or privileges; and that if the said Kennedy ever had any such rights, which is denied, they aver that the contracts made in pursuance thereto would be valid and binding only during the period of the administration of the said Kennedy, and would have ceased to have any force or effect, and would have become null and void from the moment that the municipal government of the city of New Orleans was restored to the municipal officers prescribe' by, and elected under, the charter of the said city and laws of the State of Louisiana, to wit, on the day of , 1866.

Your respondent further denies that the said Hugh Kennedy, in his pretended capacity of mayor, or the said Hugh Kennedy, in his said capacity, and the bureau of finance, and of streets and landings, were ever vested with all of the rights or powers of the mayor, and of

the boards of aldermen and assistant aldermen, as constituted
23 under the charter of said city, or with the right, power, and authority to bind the said city in the form and manner set forth in said petition.

And your respondent further avers that even if they were so authorized and empowered, which is denied, the said contract would be null and void and of no effect, because none of the formalities prescribe' by law and the ordinances of the said city were ever complied with; there were no specifications, advertisements, offer to sell at auction, or adjudication, &c.

Your respondent further avers that the premises pretended to be leased were appropriated for public use, and were hors de commerce, and not subject to contract. That the pretended contract, and the inclosing and using the said premises, as therein specified, would deprive the public of the use of said premises, which is prohibited by law; that the enclosure, buildings, fences, &c., erected on said premises are nuisances, which the law authorizes the municipal authorities to abate.

Your respondent further avers that said Hugh Kennedy was not its agent, and that he has exceeded his power and authority, and that The City of New Orleans is in no manner or way bound by his illegal
24 and unauthorized acts or contracts, or liable or responsible for any damage which may arise therefrom: Wherefore your respondent prays that the injunction issued in this case be set aside, plaintiff's petition be dismissed with costs, and for all other and further relief as the nature of the case may admit of.

(Signed) BUCHANAN & GILMORE,
For Defendant.

Supplemental petition and order.—Filed May 7th, 1866.

United States circuit court, sixth circuit, eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS.

To the honorable judges of the United States circuit court for the sixth judicial circuit and eastern district of Louisiana:

The supplemental petition of the New York Mail Steamship Company respectfully shows and states:

That the City of New Orleans, defendant herein, disregarding and in defiance of the writ of injunction issued by this honorable court in this cause, has commenced, through its acting mayor and city attorney, an action in the third district court of New Orleans, and caused an
25 injunction to be issued by said district court, restraining and enjoining your petitioner from erecting, building, or constructing any fence, work, building, or enclosure on the landing, river bank, and levee mentioned and describe' in the original petition filed herein.

That your petitioner is apprehensive that said City of New Orleans will cause other and further suits and proceedings to be commenced, which shall vex, harrass, and disturb your petitioner in the use and occupation and enjoyment of said demised premises.

Wherefore your petitioner prays, the annexed bonds and affidavit considered, that an order of injunction may be issued by this honorable court prohibiting and enjoining the said City of New Orleans, the mayor and attorney thereof, and all its agents, employees, and officers,

from further prosecuting and proceeding in said action in said third district court of New Orleans, and from bringing or commencing any other action or proceeding which shall interfere with said New York Mail Steamship Company, in the full, free, and exclusive use and enjoyment of the said demised premises, according to the provisions and terms of said lease until the further order of this honorable court; and that petitioner have leave to file this supplemental , and that said City
26 of N. O. be cited to appear and answer this supplemental petition; and that after due proceedings had that petitioner may have judgement that said order of injunction as above prayed for be made perpetual during the said term of ten years from the eight'day of July, 1865; and for all general and special relief in the premises just and equitable.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Petitioners.

STATE OF LOUISIANA, *Parish of Orleans:*

J. M. Courtenay, being duly sworn, deposes and says that he is the attorney-in-fact of the New York Mail Steamship Company, in the above supplemental petition named, and that all the allegations and the facts stated in the foregoing petition are true.

(Signed) J. M. COURTENAY.

Sworn to and subscribed before me this 7th day of May, 1866.

(Signed) F. B. VINOT, *D'y Clerk.*

Let this supplemental petition be filed, and let the injunction issue as prayed for, on plaintiff giving bond in the sum of five thousand dollars with good and solvent security, conditioned as the law directs.

New Orleans, 7th May, 1866.

(Signed) E. H. DURELL, *Judge.*

Bond for injunction.—Filed May 7th, 1866.

Know all men by these presents that we, The New York Mail
27 Steamship Company, by J. M. Court'nay, attorney-in-fact, as principal, and A. S. Mansfield, as surety, are held and firmly bound, jointly and severally, unto the City of New Orleans, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said City of New Orleans and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, seal' with our seals, and dated the 7th day of May, in the year of our Lord eighteen hundred and sixty-six.

Whereas The New York Mail Steamship Company has this day presented a supplemental petition to the honorable the circuit court of the United States for the 6th circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of injunction for the purposes therein set forth:

Now, the condition of the above obligation is, that we, the above bounden The New York Mail Steamship Company and A. S. Mansfield, will well and truly pay to The City of New Orleans, the defendant in said injunction, all such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) J. M. COURTENAY. [L. S.]
28 (Signed) A. S. MANSFIELD. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

Filed May 7th, 1866.

Injunction.—Issued May 7th, 1866.

UNITED STATES OF AMERICA:

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Circuit court of the United States, sixth circuit, and eastern district of Louisiana.

The President of the United States to The City of New Orleans, the mayor and attorney thereof, and its agents employés, and officers, greeting:

Whereas it has been represented to us in our said circuit court, on the part of The New York Mail Steamship Company, by their supplemental petition lately exhibited against you, to be relieved touching and concerning certain matters and things in said supplemental petition contained: Now, therefore, in consideration of the premises, and of the allegations in said petition contained, you, The City of New Orleans, the mayor and attorneys thereof, and all its agents, employés, and officers, and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and de-
29 sist from further prosecution and proceedings in an action instituted by The City of New Orleans in third district court of New Orleans against the said New York Mail Steamship Company, and from bringing or commencing any other action or proceeding which shall interfere with said New York Mail Steamship Company in the full, free, and exclusive use and enjoyment of the said demise, premises, according to the provisions and terms of said lease, until the further order of this honorable court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 7th day of May, A. D. 1866.

[SEAL.] (Signed) CHARLES CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May 8th, 1866, and, on the same day, month, and year, served a copy of the within injunction on George Clark, acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

This document, with the U. S. marshal's 1st return thereon, re-
30 ceived in the U. S. marshal's office May 18th, 1866, and, on the same day, month, and year, served a copy of this writ, with the marshal's first return thereon, on Jno. T. Monroe, mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 19th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

Citation to supplemental petition.

NEW YORK MAIL STEAMSHIP CO.
vs.
CITY OF NEW ORLEANS. } No. 3852.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon the City of New Orleans to comply with the demand of the New York Mail Steamship Company, contained in the supplemental petition, of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit, and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgement will be rendered against it by default, which delay is increase' one day for every ten miles the defendant's residence is distant from New Orleans, the place where the
31 court is held; and that you make due return hereof on the first Monday of June, 1866.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 7th day of May, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May the 8th, 1866, and, on the same day, month, and year, served a copy of the within citation and supplemental petition accompanying the same, on Geo. Clark, acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Rule taken by plaintiff—From minutes of May 7th, 1866.

NEW YORK MAIL STEAMSHIP CO'Y
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Circuit court of the United States, sixth circuit, and eastern district of Louisiana. April term, 1866.

NEW ORLEANS, *Monday, May 7th*, 1866.

32 Court met pursuant to adjournment—
Present, the honorable E. H. Durell, dist. judge.

On motion of Sullivan, Billings & Hughes, attorneys for plaintiff, and upon the suggestion that a writ of injunction, on the 18th day of April, 1866, issued in this cause by the court, whereby the defendants, their agents, officers, and attorneys were enjoined and prohibited from certain acts, but that, in violation of said writ of injunction, the defendants, and especially the Hon. George Clark, acting mayor, has cause' an action to be commenced in behalf of the defendants against the

plaintiff, in the third district court of New Orleans, and has, in the said suit, obtained a writ of injunction against the plaintiff, which is in violation of the writ of injunction in this court obtained as above set forth:

It is ordered that the defendants herein, and said George Clark, acting mayor of said city, caused said suit to be discontinued, and said writ of injunction in said third district court be vacated, or show cause before this court at 11 o'clock a. m., on Saturday, the 12th day of May, eighteen hundred and sixty-six, why they should not be punished for a contempt, and why plaintiff should not have all other relief which may be equitable and just in the premises.

33 *Marshal's return.*

Received May 8th, 1866, and, on the 8th day of the same month and year, served a copy of the within rule on Geo. Clark, acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Answer of Geo. Clarke, acting mayor, to rule for contempt.—Filed May 12th, 1866.

NEW YORK MAIL STEAMSHIP COMP'Y
vs.
THE CITY OF NEW ORLEANS.

George Clark, acting mayor of the city of New Orleans, for answer to the rule herein served upon him to show cause why he should not be punish' for contempt of an alleged violation of the writ of injunction issued in this cause, says that he has done or performed no act in violation of said writ of injunction, and that he has never intended any violation thereof, or intended in any manner to treat with disrespect the authority of this honorable court; on the contrary, this respondent respectfully submits that, from the moment the said writ was served, neither he, nor any one acting under his authority, have intended
34 or *or* attempted to violate the said injunction.

And, further answering, respondent says that, at the time of the service of said writ, a fence, which had enclosed the premises described in the plaintiff's petition had been removed; that your respondent was advised that the effect of said writ of injunction was to preserved the property in the state and condition in which it was at the time of the service of said writ; that neither the plaintiff or defendant had the right to make any change or alteration in the condition of the premises; but this respondent says that, being credibly informed, and believing that the said plaintiffs were, in violation of their legal obligations arising from the said injunction, preparing materials and engaging workmen, with a view of changing a new fence around the same during the night of Saturday and Sunday, at a time when no process to restrain them could be issued from any court, your respondent, not with a view of treating with contempt the mandate of this honorable court, or of violating its authority, but, on the contrary, with a view to maintain what he considered to be the object and effect of the injunction issued in this cause, applied for and obtained from the third district court of New Orleans the injunction complained of.

35 Wherefore, disclaiming the intention imputed to him of treating with contempt the authority of this honorable court, he submits himself to such judgement as the honorable court may render in the premises.

(Signed) GEORGE CLARK,
Mayor pro tem.

Sworn to and subscribed before me this 12th day of May, 1866.
(Signed) CH'S CLAIBORNE, *Clerk.*

Minute of evidence.—Filed May 12th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS.

Plaintiff offered in evidence certified copy of petition instituted in the case No. 21259, City of New Orleans, vs. New York Mail Steamship Company, instituted in the 3d district court of New Orleans.
And, also, the injunction annexed to said petition.

Document offered in evidence, and filed May 12th, 1866.

To the honorable the judge of the third district court of New Orleans:

The petition of the mayor, aldermen, and citizens of the city of New Orleans, respectfully shows that they are informed and have good reason to believe, and do believe, that The New York Mail Steamship
36 Company, describing itself as a corporation incorporated under the laws of the State of New York, and domiciled in said State of New York, and represented in this State by their attorney-in-fact, J. M. Courtenay, who resides in New Orleans, and the said J. M. Courtenay, are now preparing materials, employing labor, and contracting for the purpose of building and enclosing with a fence or other works a portion of the landing, river bank, and levee of the city of New Orleans, viz, from the upper line of the space now allotted and set apart for a ferry-landing opposite St. Ann street, in the second district, for a distance of six hundred feet up stream, by a depth of two hundred feet from the front line of the wharf.

Your petitioners further shows that the whole of the above-described portion of landing, river bank, and levee is dedicated to the public use, and that the erection of any work, building, or the fencing in or enclosing of the same, or any part thereof, would tend to obstruct a place of which the public has the use, and that the said New York Mail Steamship Company, and its said attorney-in-fact, J. M. Courtenay, are about to, and unless prevented by an order from this honorable court will, so obstruct the public use.

Your petitioners represents that, by the act of the legislature
37 of 1852, they are dispensed from furnishing bond and security, and that, by reason of the annexed affidavit, they are entitled to a writ of injunction.

Wherefore your petitioners pray that, the premises considered, a writ of injunction may be duly issued from this honorable court, prohibiting and enjoining the said New York Mail Steamship Company and the said J. M. Courtenay from erecting, building, and constructing any fence, work, building, or enclosure on the above-described portion of the landing, river bank, and levee, or any part thereof; and your petitioners further

pray that the said New York Mail Steamship Company, through its attorney-in-fact, J. M. Courtenay, and the said J. M. Courtenay, be duly cited to appear and answer this petition, and that, after due proceedings, *that* there be judgement in favor of your petitioners, and against the said defendants, and that the said injunction be made perpetual; and your petitioners pray for all other and further relief as the nature of the case may admit of.

(Signed) H. OGDEN, *City Attorney.*

George Clark, mayor pro tem. of the city of New Orleans, being duly sworn, deposes and says that all the facts and allegations in the foregoing petition are true.

(Signed) GEORGE CLARK,
Mayor pro tem.

38 Sworn to and subscribed before me this 21st day of April, 1866.

(Signed) SAMUEL MYERS,
2 *Justice of the Peace, Parish of Orleans.*

Order.

Let a writ of injunction issued herein, as prayed for, according to law, prohibiting The N. York Mail St'ship Company, and J. M. Courtenay from erecting, building, or constructing, any fence, work, building, or enclosure on the property described in plaintiff's petition.

New Orleans, April 21st, 1865.

(Signed) E. T. FELLOWES, *Judge.*

CLERK'S OFFICE, *April 23d*, 1866.

A true copy.

(Signed) J. A. WOOLFLEY, *Clerk.* [SEAL.]

Document annexed to petition, offered by plaintiff, and filed in evidence, May 12th, 1866.

CITY OF NEW ORLEANS
vs.
THE N. YORK MAIL S. S. Co. } No. 21259.

State of Louisiana, third district court of New Orleans, to the New York Mail Steamship Company and J. M. Courtenay, its att'y-in fact:

You are hereby commanded, enjoined, and restrained, in the
39 name of the State of Louisiana, and of the third district court of New Orleans, from erecting, building, or constructing, any fence, work, building, or enclosure or other work on that portion of the landing, river bank, and levee of the city of New Orleans, viz, from the upper line of the space now allotted and set apart for a ferry-landing, opposite St. Ann street, in the second district, for a distance of six hundred feet up stream, by a depth of two hundred feet from the front line of the wharf, and you are so com'anded, enjoined, and restrained until the further order of this court.

Witness the honorable E. T. Fellowes, judge of our said court, at the city of New Orleans, this 21st day of April, in the year of our Lord eighteen hundred and sixty-six, and in the 90th year of the independence of the United States.

(Signed) J. O. CHALON, *D'y Clerk.*

Hearing and continuance of rule.—From the minutes of May 12th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

The rule taken by plaintiff on the 7th instant, came up for trial—Sullivan, Billings, & Hughes, for plaintiffs, Buchanan & Gilmore, for defendant in rule—

When, after hearings the pleadings, evidence, and argument, it is ordered that the rule be continued till Monday, 14th instant, at 11 a. m.

40 *Order, continuance of rule.—From the minutes of May 14th, 1866.*

THE NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

The rule continued from Saturday last was called up, and upon defendant's application, ordered to be continued until Thursday next, 17th inst., at 11 a. m.

Rule taken by defendants.—From the minutes of May 14th, 1866.

THE NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

On motion of Buchanan & Gilmore, of counsel for defendant, it is ordered that the plaintiff show cause, on Thursday, the 17th instant, at 11 o'clock a. m., why the injunction herein issued on the 18th ultimo, should not be restrained during the pendency of this suit from erecting fencing, sheds, or other obstructions upon the premises described in the petition upon the grounds: 1st. That the locus in quo is part of the public landing or quay, of which the public have the use, and from which the public cannot be excluded, and is not susceptible of exclusive private use and enjoyment, and that any pretended contract purporting to confer such right, is in derogation of the public right, and is absolutely
41 null & void. 2d. That the plaintiff's petition shows no cause of action.

And it is further ordered that the said plaintiff show cause at same time why the second writ of injunction herein issued on the seventh instant should not be set aside upon the ground that the same issued improvidently and for the reasons above stated.

Marshal's return.

Received May 15th, 1866, and, the same day, month, and year, served a copy of the within rule on Sullivan, Billings & Hughes, esq'rs, attorney' for plaintiff in the within suit, by leaving said documents in the hands of J. P. Sullivan, esq'r., one of said attorneys, personally, at the office of the U. S. marshal in this city.

New Orleans, May 15th, 1866.

(Signed) J. J. PRIES,
D'y U. S. Marshal.

Order continuance of rules and case on its merits.—From the minutes of May 17, 1866.

NEW YORK MAIL STEAMSHIP CO. vs. THE CITY OF NEW ORLEANS. } No. 3852.

By consent of co'nsel, in open court, it is ordered that the rules, as well as the case on its merits, be tried on Saturday, 26th instant, at 11 o'clock a. m.

Supplemental and amended answer tend'ing rent notes.—Filed May 24th, 1866.

42 NEW YORK MAIL STEAMSHIP CO. vs. THE CITY OF NEW ORLEANS. } No. 3852.

In the circuit court of the United States for the sixth circuit and eastern district of Louisiana.

Now into this court comes the defendant, The City of New Orleans, and, with leave of the court first had and obtained, files this supplemental and amended answer in the above-entitled suit.

And respondent, repeating the pleas hereinbefore made, says that the defendant is entitled to have the pretended lease made to plaintiff of a portion of the landing, by act before Andrew Hero of date the 8th of July, 1865, cancelled, annulled, and rescinded, and that respondent herewith filed and tenders to plaintiffs their monthly rents notes, one hundred and eleven in number, for $666 66, each numbered 10 to 120 inclusive, and paraphed by the notary to identify them with the act of lease.

Wherefore respondent prays that the said rent notes thus tendered to plaintiffs be deemed their property and at their risk, and that they be condemned to deliver up to respondent the premises leased, and for general relief.

(Signed) BUCHANAN & GILMORE,
For Defendant.

43 Let this supplemental and amended answer be filed.
May 24th, 1866.
(Signed) E. H. DURELL, *Judge.*

The 111 notes herein mentioned have been given to the clerk, and filed under date May 24th, 1866.

Order continuance of rules of cause.—From the minutes of May 26th, 1866.

NEW YORK MAIL STEAMSHIP CO. vs. THE CITY OF NEW ORLEANS. } No. 3852.

For want of time it is ordered by the court that the rules pending in this case, as well as the cause on its merits, be continued until Wednesday next, 30th instant, at 11 a. m.

Note of evidence.—Filed May 30th, 1866.

N. Y. MAIL S. SHIP COMPANY
vs.
THE CITY OF NEW ORLEANS.

Def't offered in evidence the answer of Geo. Clark, Doc't "B," resolution.
L. H. Pilie sworn for defendant.
Plaintiff offered in evidence notarial act, marked "C." (See page 6.)
Defendant offered plan "D."
Plaintiff offered note "E" and dockets F, G, H, I, K, L, M.
H. Clovenee sworn for plaintiff.
Def'd't offered ordinance appearing in the Picayune 29th June, 1862, marked "N."
44 W'm Thield, Mr. Crawford, Crawford, jr., sworn for plaintiff.
Plaintiff offered plan "O."
J. A. D'Hémécourt and I. A. Lusk sworn for defendant.

Document "B," offered by defendant, May 30th, 1866.

No. 13, new series.

MAYORALTY OF NEW ORLEANS,
City Hall, 16th day of April, 1866.

Whereas the municipal authorities are bound to preserve unobstructed for public use the streets of this city and the banks of the river, which are public places; and whereas certain steamship and steamboat companies and other persons have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings, be it therefore—

Resolved, That the city surveyor be, and he is hereby, authorized and directed to cause to be removed immediately all fences, buildings, etc., and other obstructions found on the levee in front of the city.

(Signed) W'M McCULLOGH,
President of Board of Ass't Ald'm'.
GEO. CLARK,
President pro tem. Board of Aldermen.

Approved April 12th, 1866.
(Signed) GEO. CLARK,
Mayor pro tem.

45 (Signed) JNO. OVERALL,
Private Secretary.

A true copy:
(Signed) THEO. MARKS.

(Here follows map, marked page 56.)

S. of F.—Exhibit K—Document "E."—(Note.)

$666 66⅔.] NEW ORLEANS, *8th July*, 1865.

On the 8th of April, 1866, after date, N. Y. Mail Steamship Co. promise to pay to the order of the treasurer of the city of New Orleans, at

the office of said treasurer, six hundred and sixty-six .66⅔ dollars, value received in rent.

(Signed) J. M. COURTENAY,
Agent N. Y. M. S. S. Co.

No. 9. Paraphed Ne varietur, New Orleans, July 8th, 1865.

(Signed) ANDREW HERO, *Not. Pub.*

(Endorsed:) FRANCIS MOUNEY,
Ass't Trea'r.

Document "F."

[General orders No. 6.]

STATE OF LOUISIANA:

EXECUTIVE DEPARTMENT,
N. Orleans, Jan'y 30th, 1863.

1st. Colonel Henry C. Deming is, at his own request, hereby relieved from duty as acting mayor of New Orleans.

2d. Captain James F. Miller, A. A. G., is hereby appointed provisional acting mayor of New Orleans, and will be obeyed and respected accordingly.

(Signed) G. F. SHEPLEY,
Brig. Gen'l U. S. Vol's, M'l'y Gov. La.

46 Official copy:

(Signed) DE WITT CLINTON,
Brevet L't Colonel, Judge Advocate.

Document "G."

[General orders No. 11.]

STATE OF LOUISIANA:

EXECUTIVE DEPARTMENT,
N. Orleans. Oct. 1st, 1865.

Part 1st. Brigadier General Godfrey Weitzel having been assigned to the command of the reserve brigade, Department of the Gulf, is, at his own request, hereby relieved from duty as assistant military commandant and acting mayor of New Orleans.

2d. Colonel Henry C. Deming, 12th Regiment Connecticut Volunteers, is hereby appointed acting mayor of New Orleans, and will be obeyed and respected accordingly.

By order of Brig. General G. F. Shepley, military governor of Louisiana:

(Signed) JAMES P. MILLER,
Ass't Adj't Gen'l.

Official copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

Document "H."

[General orders No. 24.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 10th, 1862.

Acting Brig. Gen. George F. Shepley, Colonel 12th Maine Volunteers, is hereby appointed military commandant of New Orleans. All

47 officers or duty in this city or in Algiers, except officers of the division staff, will report to him.

By command of Major General Butler:

GEO. C. STRONG,
Ass't Adj't General.

Official copy:

DE WITT CLINTON,
Brevet Lieutenant Col., Judge Advocate.

Document "I."

[Special orders No. 119.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 5th, 1866.

(Extract.)

5. Colonel Samuel M. Quincy, 73 U. S. Colored Infantry, is relieved from his present duties, and is hereby assigned to the duty of acting mayor of the city of New Orleans.

Upon the receipt of this order he will proceed to the city hall and assume the duties of that office. The present acting mayor is directed to surrender to him all the papers connected with that office.

By command of Major General Banks:

J. C. STONE,
Capt. and Ass't Adj't General.

Official:
(Signed) NATHANIEL BURBANK,
1st Lieut. and Acting Ass't Adj't Gen.

Document "K."

[Special orders No. 152.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, June 8th, 1865.

48 (Extract.)

Pa't 17. Mr. Hugh Kennedy is appointed acting mayor of the city of New Orleans.

Colonel Samuel M. Quincy, 73d U. S. Colored Infantry, is relieved from duty as acting mayor, and will rejoin his regiment. He will turn over to Mr. G. Burke, who is authorized to act until the arrival of the acting mayor, the duties of the office in which he is now acting.

By order of Major General E. R. S. Canby:
(Signed) C. H. DYER,
Ass't Adj't General.

Official copy:

DE WITT CLINTON,
B'v't L't Col. and Judge Advocate.

Document "L."

[General orders No. 26.]

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., March 18th, 1866.

Upon the qualification and inauguration of the municipal officers who may have been elected under the law of the State of Louisiana, passed on the 13th day of Feb'uary, 1866, and the governor's proclamation of March 6th, 1866, the military order of May 20th, 1862, creating the present municipal government of the city of New Orleans, and any subsequent military orders, enlarging, limiting, or otherwise modifying the powers, duties, and obligations of the said municipal officers, will be vacated from and after 12 o'clock m., of Monday, the 19th day of March,
49 1866, as above cited, provided that this order shall not be construed as affecting or determining any question of public or private rights, or as impa'ring in any degree the obligations of any contract created or entered into by the present municipal authorities, under and in conformity with the powers delegated to them by competent military authority.

If any of the persons elected or claiming to be elected to municipal offices under the authority of the law, and proclamation above cited, *and* disqualified by reasons of being excepted from the benefits of the President's proclamation of May 29th, 1865, that fact will be determined by the com'ander of this departement, or other superior military authority, and such persons will not be permitted to exercise the functions of the officers to which they have been elected, or may claim to have been elected until the disability has been removed by the President, or he has otherwise passed upon the case or cases of the person or persons so disqualified. In cases of disqualification under the laws of the State of Louisiana, the facts must be determined by the laws of that State, and by ordinary procedure in the courts of justice.

By order of Major General, E. R. S. Canby:

WILLIAM HOFFMAN,
Assistant Adjutant General.

Official:
50 (Signed) NATHANIEL BURBANK,
Acting Assistant Adjutant General.

Document "M."

[Special orders No. 100.—Par. 5.]

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., Nov. 9th, 1865.

Under the authority of instructions from the War Department, Colonel S. B. Holabird, chief quartermaster Department of Louisiana, is appointed a member of the joint commission, for the purpose of selecting such portions of the wharf and levee space in the port of New Orleans as may be required for the purposes of the War, Navy, and Treasury Departments.

The commission will consists of Acting Rear Admiral H. K. Thatcher, U. S. Navy, appointed by the Secretary of the Navy; Hon. W'm P. Kellogg, collector of the port of New Orleans, appointed by the Secretary of the Treasury; Col. S. P. Holabird, additional aid-de-camp, U. S.

Army, and chief quartermaster Department of Louisiana. First Lieutenant H. W. Wheeler, 81st U. S. Colored Infantry, is appointed recorder of the commission.

The acting mayor of New Orleans is requested to invite the city surveyor to attend the sessions of the commission, in order to give such information in the interest of the city as may be desired.

The commission will determined it own hours and place of
51 setting, and the Quartermaster's Department will furnish a room for the office purposes of the commission.

By order of Major General, E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. and Acting Ass't Adj't Gen.

Document "N."—Notice.

[General order No. 17.]

HEADQUARTERS MILITARY COMMANDANT OF N. O.,
City Hall, June 27th, 1862.

The legislative power of the city of New Orleans has heretofore been vested by law in a board of aldermen, and a board of assistant aldermen, who together formed the common council of the city. This power is now suspended. The seats of the aldermen and assistant aldermen have all been vacated, one class of them by the expiration of their term of office and the remainder by their neglect to take the oath of allegiance to the United States, as required by general order No. 41 of the commanding general of this department.

Believing that the inconveniance incident to a temporary suspension of legislative power, will be slight compared with the evils which have heretofore been consequent on excessive, and frequently corrupt, legislation, these vacancies will not be filled until such time as there shall be a sufficient number of the citizens of New Orleans loyal to
52 their country and their Constitution, to entitle them to resume the rights of self government.

So much of the executive power of the city as has heretofore been vested in the mayor will, for the present, be exercised by the military commandant of New Orleans.

A bureau of finance is hereby constituted, composed of a board of three persons, one of whom shall be the chairman of the board, to be appointed by the military commandant, with such clerks as may from time to time be found necessary, and may be appointed by the chairman of the board, subject to the approval of the military commandant. The duties of said bureau shall be the same as those which, under the act approved March 30th, 1856, and under other laws constituting the charter of the city of New Orleans, and under the ordinance of said city now in force, have been attributed to the several committees of finance, police, fire, judicial, claims, education, and health, in the board of aldermen, and in the board of assistant aldermen of the common council of New Orleans. The office of the said bureau shall be in the city hall.

A "bureau of streets and landings," consisting of there persons, one of whom shall be chairman, is hereby constituted. The duties

53 of said bureau shall be the same which, under the charters, laws, and ordinances of the city of New Orleans, have appertained to the several committees on streets and landings, workhouse and prisons and house of refuge in the board of aldermen and board of assistant aldermen. The office of said bureau shall be in the city hall, and the chairman shall appoint, subject to the approval of the military commandant, the necessary clerks, whose compensation will be fixed by the bureau, subject to the same approval.

The following-named persons will constitute the bureau of finance: E. H. Durell, chairman; D. S. Hughes, Stoddard Howell.

The following-named persons will constitute the board of streets and landings: Julian Neville, chairman; Edward Ames, Benjamin Campbell.

By order of—

G. F. SHEPLEY,
Military Commandant of New Orleans.

Approved and ordered.

B. F. BUTLER,
Major General Commanding Department of the Gulf.

Published in the New Orleans Picayune of June 29th, July 1st, and July 2d, 1862.

(Here follows map, marked page 68.)

54 *Order, continuance of rules and cause.—From the minutes of May 30th*, 1866.

NEW YORK MAIL S. S. Co.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

This cause came up for trial on the rules and merits—Sullivan, Billings & Hughes for plaintiff; Buchanan & Gilmore for defendant—

When, after hearing the pleadings and evidence—

It is ordered that the same be continued till to-morrow, 31st inst., at 11 a. m., and that the defendant then and there produce in court the book containing the ordinances issued by the bureau of streets and landings, from the 1st July, 1862, up to the time said bureau ceased to exist.

Exception and plea.—Filed May 30th, 1866.

NEW YORK MAIL S. S. Co.
vs.
CITY OF NEW ORLEANS. } No. 3852.

Into the honorable circuit court of the United States for the sixth circuit and eastern district of Louisiana comes the defendant, by co'nsel, and pleads for declinatory exception to the supplemental petition of plaintiff herein, and to the writ of injunction issued upon the said supplemental petition, that this court is without jurisdiction to enjoin the institution or the prosecution of a suit in a State court; wherefore defendant prays that the injunction herein issued on the 7th May,

55 1866, on the supplemental petition of plaintiff in the above-entitled suit be dissolved at plaintiff's costs, and for general relief.

(Signed) BUCHANAN & GILMORE,
Att'ys for Defendant.

Subpœna duces tecum.—Issued May 30th, 1866.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

You are hereby commanded to produce the books containing the ordinances issued by the bureau of streets and landings from the 1st July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 6th circuit, in and for the said district, to be holden at the city of New Orleans on the 31st day of May, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between The New York Mail Steamship Company and The City of New Orleans, at 11 o'clock a. m.; and therein fail not, under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the
56 Supreme Court of the United States, at the city of New Orleans, this 30th day of May, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May 31st, 9½ a. m., and, on the same day, month, and year, for'with served a copy of the within subpœna duces tecum on John T. Monroe, mayor of New Orleans, personally, at his office in the city hall of this city.

New Orleans, May 31st, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order continuance.—From the minutes of May 31st, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

For want of time, ordered that the cause be continued until Saturday next, at 11 a. m.

Subpœna duces tecum.—Issued June 5th, 1866.

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

57 You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings from the

first of July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 6th circuit, in and for the said district, to be holden at the city of New Orleans, on the 5th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between The New York Mail Steamship Company and The City of New Orleans, at 11 a. m.; and herein fail not, under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 4th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 5th, 1866, and same day forthwith served a copy of the within subpœna duces tecum, on John T. Monroe, mayor of the city of New Orleans, personally, at the city hall in this city.

(Signed) J. J. PREIS, *D'y U. S Marshal.*

NEW ORLEANS, *June 5th*, 1866.

58 *Order continuance.—From the minutes of June 2d*, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

For want of time, ordered that this cause be continued until Tuesday next, 5th inst., at 11 a. m.

Motion and order for subpœna duces tecum.—From the minutes of June 8th, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

On motion of Sullivan, Billings & Hughes, of counsel for plaintiff, it is ordered that the clerk of the court be authorized to issue a subpœna duces tecum, addressed to Pascalis Labarre, secretary of the committee of streets and landings, commanding him to produce on the trial of this action the correspondence and documents which have passed between the bureaus, establish' by General Sheppley, and the commanders of this department from August, 1862, to April, 1866.

Subpœna duces tecum.

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor
59 of the city of New Orleans, defendant:

You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings, from the 1st of July, 1863, up to the time said bureau ceased to exist, before the

circuit court of the United States for the 6th circuit, in and for the said district, to be holden at the city of New Orleans, on the 11th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between The New York M. S. S. Company and The City of New Orleans, at 11 o'clock a. m.; and herein fail not, under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 8th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 8th, 1866, &, on the 9th day of June, 1866, served a copy of the within subpœna duces tecum on John T. Monroe, mayor of the city of New Orleans, at his office in the city hall of this city.

60 (Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *June 9th*, 1866.

Subpœna duces tecum.

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to Pascalis Labarre, secretary of the committee of streets and landings:

You are hereby commanded to produce the correspondence and documents which have passed between the bureaus established by General Sheppley and the commanders of this department from August, 1862, to April, 1866, before the circ*ir*cuit court of the United States for the 6th circuit, in and for the said district, to be holden in the city of New Orleans on the 11th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between The New York Mail Steamship Co. and The City of New Orleans, at 11 a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, in the city of New Orleans, this 8th day of June, in the year of our Lord one thousand eight hundred

61 and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 8th, 1866, and, on the 9th day of June, 1866, served a copy of the within subpœna duces tecum on P. Labarre, secretary of the board of streets and landings, personally, at the office of said board in the city hall in this city.

(Signed) M. EGAN,
D'y U S. Marshal.

NEW ORLEANS, *June 9th*, 1866.

Order continuance.—From the minutes of June 11th, 1866.

NEW YORK MAIL STEAMSHIP CO. vs. THE CITY OF NEW ORLEANS. } No. 3852.

For want of time, ordered that this cause be continued until Thursday next, 14th instant, at 11 a. m., by preference.

Motion and order for subpœna duces tecum.—From the minutes of June 12th, 1866.

NEW YORK MAIL STEAMSHIP CO. vs. THE CITY OF NEW ORLEANS. } No. 3852.

On motion of Sullivan, Billings and Hughes, of co'nsel for plaintiff, ordered that a subpœna duces tecum issue herein to Pascalis Labarre, secretary of the committee of streets and landings, commanding
62 him to produce, on the trial of this cause, on Thursday, the 14th instant, at 11 a. m., the correspondence and documents which have passed between the bureaus established by General Sheppley and the commanders of this department, from August, 1862, to April, 1866.

Subpœna duces tecum.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings, from the 1st of July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 5th circuit, in and for the said district, to be holden at the city of New Orleans, on the 14th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between N. Y. Mail S. S. Comp'y and The City of New Orleans, at 11 o'clock, a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Cheif Justice of the
63 Supreme Court of the United States, at the city of New Orleans, this 12th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and the 90th year of American independence.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 12th, 1866, and, on the 13th day of same month and year, served a copy of the within subpœna duces tecum on John T. Monroe, mayor of the city of New Orleans, personally, at his office in the city hall.

New Orleans, June 14th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Subpœna duces tecum.

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to Pascalis Labarre, secretary of the committee of streets and landings:

You are hereby commanded to produce the correspondence which have passed between the bureaus established by General Shepley and the commanders of the department from August, 1862, to April, 1866, before the circuit court of the United States for the 6th circuit,
64 in and for the said district, to be holden at the city of New Orleans, on the 14th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between The N. Y. Mail Steamship Co. and The City of New Orleans, at 11 o'clock, a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this twel'th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received June 12th, 1866, and, on the 13th day of same month and year, served a copy of the within subpœna duces tecum on P. Labarre, named herein, personally, at his office in the city hall of this city.

NEW ORLEANS, *June 14th*, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order continuance.—From the minutes of June 14th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

65 This cause came up for trial—Sullivan, Billings & Hughes and W. W. Howe, for plaintiffs, Buchanan and Gilmore for defendant—when it is ordered that the cause be continued until to-morrow, at 11 a. m.

Note of evidence.—Filed June 15, 1866.

NEW YORK MAIL S. S. CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Plaintiffs especially offer in evidence the ordinance of the bureau of finance, and streets and landings, authorizing a loan of $500,000, and pledging the city property therefor.

Also, the ordinance repealing a former ordinance passed by the old elected authorities.

Also, the ordinance of the present city government, repealing an ordinance of the military government.

It is admitted that the notes from 9 to 120, inclusive, referred to in the contract of lease, were delivered and surrendered by the late military treasurer, Mr. Walton, to the present elected treasurer, Mr Hernandez, and that they are the same notes of which one of them, viz, No. 9, has been paid, and that the other 111 notes are now in possession of the clerk of this court, the same having been tendered by def't to plaintiffs.

66 J. M. Courtenay, G. Robinson, S. Howell, pl'ff, wit'ss.

Admission.—Filed June 15th, 1866.

It is admitted that, from May 21st, 1862, to March the 16th, 1866, the military municipal government of New Orleans, through the several bureaus and acting mayor, passed ordinances on all subjects on which a municipal government could legislate, and exercise' generally the legislative power given by the charter of 1856, and that these ordinances were published in the papers of the day, and were known to and sanctioned by the successive commanders of the Department of the Gulf.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Plaintiffs.

(Signed) BUCHANAN & GILMORE,
For Defendants.

NOTA.—The documents, offered in evidence by the plaintiffs and related in the foregoing note of evidence, filed June 15th, 1866, copies of which were to be furnished by said plaintiffs, have not been filed nor furnished.

New Orleans, Nov. 3d, 1866.

Attest: CHA'S CLAIBORNE, *Clerk.*

Order continuance.—Minutes of June 15th, 1866.

NEW YORK MAIL S. S. Co.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

67 This cause was resumed—Sullivan, Billings and Hughes, and W'm W. Howe, for plaintiffs, Buchanan and Gilmore for defendant—

When, after hearing further evidence, and the admissions of the parties on file, the cause is continued till to-morrow at 11 a. m.

Note of evidence.—Filed June 16th, 1866.

NEW YORK MAIL STEAMSHIP Co.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Defendant offered proclamation of General Butler, marked 103; also, documents 104, 105, 106, 107.

(Plaintiff's attorney objects to No. 107. Objection overruled and paper admitted. Defendant will furnish the whole correspondence.)

Defendant offered doc't 108; also document 109.

(Ruled out. Exception reserved.)

Defendant offered documents 110, 111, 112, 113, 114, 115, 116.

Defendant especially offer' in evidence 6,305, resolution of the municipal government, authorizing the lease of the wharf which is annexed to the lease on file.

Also, ordinance of 12th April, 1866, directing the surveyor to remove the obstructions, marked 117.

Also, Leroy's Digest of City Ordinances—

(Objected to by plaintiff's attorneys.)

Defendant offered document 118.

The court sustains the objection by plaintiff to the Digest, and
68 directs the defendant to select such ordinances as he may wish to offer, and furnished copies of the same.

(Plaintiffs objects to document 118, and asked for a certified copy of the ordinances; objection sustained. Of 640, the defendant will furnish copies.)

Defendant offered 119; also 120.

Also, the 111 notes given by pl'ff to defendant now on deposit with the clerk.

Also, the act marked 121, as published in the Daily Crescent of 10th March, 1866.

John T. Monroe, George Clark, defendant's witnesses.

Document 103.—*Proclamation.*

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 1st, 1862.

The city of New Orleans and its environs, with all its interior and exterior defenses, having been surrendered to the combined naval and land forces of the United States, and having been evacuated by the rebel forces, in whose possession they lately were, and being now in occupation of the forces of the United States, who have come to restore order, and maintain public tranquillity, enforce peace and quiet under the laws and Constitution of the United States, the major-general commanding the forces of the United States in the Department of the
69 Gulf, hereby makes known and proclaims the object and purpose of the Government of the United States, in thus taking possession of the city of New Orleans, and the State of Louisiana, and the rules and regulations by which the laws of the United States will be, for the present and during a state of war, enforced and maintained, for the plain guidance of all good citizens of the United States, as well as others who may heretofore have been in rebellion against their authority.

Thrice before has the city of New Orleans been reduced from the hands of a foreign government and still more calamitous domestic insurrection, by the money and arms of the United States. It has of late been under the military control of the rebel forces, claiming to be the peculiar friends of its citizens, and at each time, in the judgement of the commander of the military forces holding it, it has been found necessary to preserve order and maintain quiet by the administration of law martial. Even during the interim from its evacuation by the rebel soldiers and its actual possession by the soldiers of the United States, the civil authorities of the city have found it necessary to call for the intervention of an armed body known as the "European Legion," to preserve public tranquility. The commanding general, therefore, will
70 cause the city to be governed until the restoration of municipal authority and his further orders, by the law martial, a measure for which it would seem the previous recital furnishes sufficient precedents.

All persons in arms against the United States are requested to surrender themselves, with their arms, equipments, and munition' of war. The body known as the "European Legion," not being understood to be in arms against the United States, but organized to protect the lives and property of the citizens, are invited still to co-operate with the forces of the United States to that end, and so acting will not be included in the terms of this order, but will report to these headquarters.

All flags, ensigns, and devices, tending to uphold any authority whatever, save the flag of the United States and the flags of foreign consulates, must not be exhibited, but suppressed. The American ensign, the emblem ot the United States, must be treated with utmost deference and respect by all persons, under pain of severe punishment.

All persons well disposed towards the Government of the United States, who shall renew their oath of allegiance, will receive the
71 safeguard and protection, in their persons and property, of the armies of the United States; *in* violation of which, by any person, is punishable with death.

All persons still holding allegiance to the Confederate States will be deemed rebels against the authorities of the United States, and regarded and treated as enemies thereof.

All foreigners not naturalized and claiming allegiance to their respective governments and not having made oath of allegiance to the suppose' government of the Confederate States, will be protected in their persons and property, as heretofore, under the laws of the United States.

All persons who may heretofore have given their adherence to the suppose' government of the Confederate States, or having been in their service, who shall lay down and deliver up their arms and return to peaceful occupations and preserve quiet and order, holding no farther correspondence, nor giving aid and comfort to the enemies of the United States, will not be disturbed either in persons or property, except so far, under the orders of the commanding general, as the exigencies of the public service may render necessary.

The keepers of all public property, whether State, national, or confederate, such as collections of art, libraries, museum, as well as
72 all public buildings, all munitions of war, and armed vessels, will at once make full returns thereof to these headquarters; all manufacturers of arms and munition of war, will report to these headquarters their kind and place of business.

All rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States.

All inhabitants are enjoined to pursue their usual avocations; all shops and places of business and amusements are to be kept open in the accustomed manner, and services to be had in churches and religious houses as in time of profound peace.

Keepers of all public houses, coffee-houses, and drinking-saloons are to report their names and numbers to the office of the provost-marshal; will there receive license, and be held responsible for all disorders and disturbance' of the peace arising in their respective places.

A sufficient force will be kept in the city to preserve order and maintain the laws.

The killing of an American soldier by any disorderly person or mob *is* simply assassination and murder, and not war, and will be so regarded and punished. The owner of any house or building in or from which such murder shall be committed will be held responsible

73 therefor, and the house be liable to be destroyed by the military authority.

All disorders and disturbances of the peace and crimes will be referred to a military court for trial and punishment; civil causes between party and party will be referred to the ordinary tribunals. The levy and collections of all taxes, save those imposed by the laws of the United States are suppressed, except those for keeping in repair and lighting the streets, and for sanitary purposes—they are to be collected in the usual manner.

The circulation of confederate notes, bonds, evidence of debt, or script, or any trade in the same, is strictly forbidden.

No publications, either by newspaper, pamphlet, or hand-bill, giving accounts of the movements of soldiers of the United States within this Department, reflecting in any way upon the United States or its officers, or tending in any way to influence the public mind against the Government of the United States, will be permitted; and all articles of war news, or editorial comments upon the movements of the armies of the United States or the rebels, must be submitted to the examination of an officer, who will be detailed for that purpose from these headquarters.

74 The transmission of all communications by telegraph will be under the charge of an officer from these headquarters.

The armies of the United States came here not to destroy but to make good; to restore order out of chaos, and the government of laws in place of the passion of men. To this end, therefore, the efforts of all well-disposed persons are invited to have every species of disorder quelled; and if any soldier of the United States should so far forget his duty or his flag as to commit any outrage upon any person or property, the commanding general requests that his name be instantly reported to the provost guard, so that he may be punished, and his wrongful act redressed.

The municipal authorities, so far as the police of the city and crimes are concerned, except as before indicated, is hereby suspended.

All assemblages of persons in the streets, either by day or by night, tend to disorder, and are forbidden.

The various companies composing the fire department in New Orleans, will be permitted to retain their organizations, and are to report to the office of the provost marshal.

And finally, it may be sufficient to add, without further enu-
75 meration, that all the requirements of martial law will be imposed so long as, in the judgement of the United States authorities, it may be necessary; and while it is the desire of these authorities to exercise this government mildly, and after the usages of the past, it must not be supposed that it will not be vigorously and firmly administered, as occasion calls.

By command of Maj. Gen. Butler:

GEORGE A. STRONG,
A. A. G., Chief Staff.

Document 104.

General orders No. 24.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 10th, 1862.

Acting Brig. Gen. Geo. F. Shepley, Colonel 12th Maine Volunteers, is hereby appointed military commandant of New Orleans.

All officers on duty in this city or in Algiers, except officers of the division staff, will report to him.

By command of Maj. Gen. Butler:

GEO. C. STRONG,
Assistant Adjutant General.

Official copy:
(Signed) DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

Document 105.

[Special orders No. 119.]

HEADQUARTERS DEPARTMENT OF THE GULF,
76 *New Orleans, May 5th*, 1865.

[Extract.]

5. Colonel Samuel M. Quincy, 73d U. S. Colored Infantry, is relieved from his present duties, and his hereby assigned to the duty of acting mayor of the city of New Orleans.

Upon receipt of this order he will proceed to the city hall and assume the duties of that office.

The present acting mayor is directed to surrender to him all the papers connected with that office.

By command of Major Gen. Banks:

J. C. STONE,
Captain and Ass't Adj't Gen.

(Signed) NATHANIEL BURBANK,
1st Lieut. and Acting Ass't Adj't Gen.

Document 101.

[Special order No. 152.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, La., June 8th, 1865.

Mr. Hugh Kennedy is appointed acting mayor of the city of New Orleans.

Colonel Samuel M. Quincy, 73d Colored Infantry, is relieved from duty as acting mayor, and will rejoin his regiment. He will turn over to Mr. G. Burke, who is authorized to act until the arrival of the acting mayor, the duties of the office in which he is now acting.

By order of Maj. Gen'l E. R. S. Canby:

77 (Signed) C. A. DYER,
Assistant Adjutant Gen'l.

Official copy:
(Signed). DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

Document 107.

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., Sept 4th, 1865.

His honor the mayor of New Orleans.

SIR: Your com'unication of the 24th ult. has been considered in con-

nection with the report of the chief quartermaster of the department, subsequent to his conference with the city surveyor. As the result of this examination, I will recommend to the War Department the appointement of a joint commission for the purpose of selecting the levee and wharf space, required by the War, Navy, and Treasury Departements, to be held as permanent reservations.

The selection to be made with reference to the wants of these Departements in a period of peace, and with due regard to the com'ercial interests of the city of New Orleans, and will recom'end that the rights and interest of the Government to the remainder of the levee and wharf space, held by the city of New Orleans at the time of capture by the forces of the United States be relinquished to the city,
78 subject to the conditions that no harbor, wharf, light, or hospital dues, shall be charged against any vessel belonging to the Government of the United States.

I have beleived that the formal surrender of the rights acquired by the United States during and in consequence of the rebellion would not be formally relinquished until the State or States in which they were acquired, were restored to the Union, but in view of the suggestions made by you of the importance of the projected work to the commercial and financial interest of the city, I will asked that the action recommanded be taken at the earliest practical moment. In the meantime, the instructions of the 24th ult., in relation to the reservation for military purposes will stand as notified by the chief quartermaster and surveyor of this city.

The suggestions in my communication of the 24th ult., with regard to the period of the contemplated leases were made in the interest of the city. I did not and do not think it wise or prudent for the present city government to commit the city to a course of action that may result in useless and costly litigations, while I do not doubt that the city of New Orleans will ultimately be fully reinstated.

79 That action has not been taken, and the time and manner are more or less remote and contingent, and until that is done the want of power in the city government opens the road for litigation, and that litigation will determined nothing so far as the city is concerned, except to increase the tax levy.

You will permit me to add that the Government of the United States is not responsible for the bankrupt condition of the city finances, nor are its officers and agents amenable to the reproach which you make against them.

I cannot answer for the officers of other departments than that in which I am serving, but I beleived that the history of New Orleans, since its occupation, will show that they have never been slow to concede to the city whatever they could legally concede, and to render any assistance that it was in their power to render; and I know that nearly every military commander, since the occupation, has made himself personally responsible to the Treasury by directing large sums of money from the original destination and applying them to the wants of the city, its charrities, and its poor.

The subject referred to in the last paragraph of your letter was
80 referred to me some time since, and so much of your letter to his excellency the President as related to the New Orleans and Jackson, and New Orleans and Opelousas Railroad', was reported up some time since, and that which relates to the wharves will be so soon as the

indebt'ness of the city to the different departements of the Army can be ascertained.

I am, sir, very respectfully, your ob't servant,

(Signed) E. R. S. CANBY,
Maj Gen'l Commending.

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document 108.

Endorsement on communication of J. M. Courtenay, agent of the New York Mail Steamship Company, asking the approval of Major General E. R. S. Canby, on subject of building a wharf for said company.

HEADQUARTERS DEPARTEMENT OF LA.,
New Orleans, La., Sept. 5th, 1865.

Respectfully returned. The military authorities will not interfered with the wharves, except so far as to prevent the Government from being ousted from the occupation of such wharves and levees as are required for public purposes. The mayor of the city has been fully advised upon these subjects, and *if* the points to which that in-
81 terference will be limited. The locality covered by the lease herein referred to is not one of the points. I do not think, however, that it will be wise either for the city, or for the lessees under the city, to embark in enterprises involving large expenditures until after the corporation has been fully reinstated in its original rights.

This can only be done by executive authority, and, I presume, will be done within a short period.

(Signed) E. R. S. CANBY,
Maj. Gen'l Commending.

Official copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

(Document 109 ruled out.)

Document 110.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
New Orleans, May 24th, 1866.

I hereby certify that the returns of an election for municipal officers of the city of New Orleans, held on the second Monday, (the 12th day) of March, 1866, in conformity with the provisions of the acts No. 17 and 34, passed by the general assembly of Louisiana, in the month of Feb-'uary, 1866, made to this office by Charles Bienvenu, then sheriff of the parish of Orleans, show that the following officers were duly elected, viz:

John T. Monroe, mayor of the city of New Orleans; P. G.
82 Mohan, comptroller, city of New Orleans; Alfred Bellanger, street commissioner, do.; William J. Ahern, Arthur Gastinel, J. A. Letten, and H. T. Menard, recorders of the city of New Orleans; J. O. Nixon, Williamson Smith, James McCloskey, George Clark, Norman Whitney, E. D. White, F. A. Wolfrey, A. W. Bosworth, Thomas McKnight, aldermen of the city of New Orleans; P. Cummings, W. H. Higginbotham, James Prague, F. Lurgess, W'm McCulloch, Thomas S. Moore, H. F. Sturcken, J. B. Cunningham, John P. Montarnat, Victor

Prados, John Preisly, George D. Kauz, E. Goldman, John F. Crautz, P. Kaiser, assistant aldermen of the city of New Orleans.

Given under my hand and the seal of the State, at the city of New Orleans, the day and date above written.

(Signed) J. H. HARDY,
Secretary of State.

Document 111.

[General Orders No. 26.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., March 18th, 1866.

Upon the qualification and inauguration of the municipal officers who may have been elected under the law of the State of Louisiana,
83 passed on the 13th day of February, 1866, and the governor's proclamation of March 6th, 1866, the military order of May 20th, 1862, creating the present municipal government of the city of New Orleans, and any subsequent military orders enlarging, limiting, or otherwise modifying the powers, duties, and obligations of the said municipal officers, will be vacated from and after 12 o'clock m., of Monday the 19th day of March, 1866, the day appointed and designated by the laws of February 13th, 1866, as above cited; provided, that this order shall not be construed as affecting or determining any question of public or private rights, or as impairing in any degree the obligations of any contract created or entered into by the present municipal authorities, under and in conformity with the powers delegated to them by competent military authority.

If any of the persons elected, or claiming to be elected, to municipal offices under the authority of the law and proclamation above cited, are disqualified, by reason of being excepted from the benefits of the President's proclamation of May 29th, 1865, that fact will be determined by the commander of this Department, or other superior military authority, and such persons will not be permitted to exercise the functions
84 of the offices to which they have been elected, or may claim to have been elected, until the disability has been removed by the President, or he has otherwise passed upon the case or cases of the person or persons so disqualified. In cases of disqualification under the laws of the State of Louisiana the facts must be determined by the laws of that State, and by ordinary proceedure in the courts of justice.

By order of Maj. Gen'l E. R. S. Canby:

WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:
(Signed) NATHANIEL BURBANK,
Acting Ass't Adj't Gen'l.

Document 112.

[General Orders No. 63.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., March 19th, 1866.

[Extract.]

2. It appearing that John T. Monroe and James O. Nixon, who received, respectively, at the late municipal election, a majority of the

votes for the offices of mayor and alderman, may come within the cla'ses of exceptions mentioned in the President's proclamation of amnesty; neither having received a special pardon, they are suspended
85 from the exercise of any of the functions of those offices until their cases can be investigated, and the pleasure of the President be made known, but they will be allowed to take the oath of office, and the mayor elect will be allowed to administer the usual oath to persons elected.

The remaining persons elected will, upon complying with the requirements of the constitution and laws of the State, be inducted into office, and the municipal government of the city, as thus constituted, and with the two exceptions above mentioned, is declared to be organized and in full force and vigor.

By order of Maj. Gen. E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Ass't Adj't Gen'l.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut., Act. Ass't Adj't Gen'l.

Document 113.

[Special Orders No. 63.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., March 19*th*, '66.

[Extract.]

3. I. Add. Rozier, esq., is appointed mayor of the city of New Orleans, pro tempore, and will act in that capacity until the municipal government of the city is organized, as provided for by the 15th section
86 of the city charter, in the case of the sickness or temporary absence of the mayor.

By order of Maj. Gen. E. R. S. Canby:

WICKHAM HOFFMAN,
Ass't Adj't General.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen.

Document 114.

[Special Orders No. 64.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., March 20*th*, '66.

[Extract.]

3. The mayor pro tempore of the city of New Orleans, having reported that the municipal government of the city has been organized in accordance with the provisions of the charter, I. Ad. Rosier, esq., is relieved from the special duty assigned him by Special Orders No. 63, paragraph 3, of the 19th instant, and George Clark, esq., president of the board of aldermen, is recognized, under the 15th section of the charter, as mayor pro tempore of the city of New Orleans.

The pro tempore appointements made by Mr. Rosier will be vacated as soon as their successors are appointed.

By order of Maj. Gen'l E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Ass't Adj't General.

Official:

87 (Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen'l.

Document "115."

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., April 11th, 1866.

[Extract.]

3. By direction of the President, the suspension of John T. Monroe and James O. Nixon from the exercise of their functions of mayor and alderman of the city of New Orleans, respectively, as promulgated in Special Orders No. 63, paragraph 2, current series from these headquarters, will continue in force until they shall apply to the President, and received his special pardon, such pardon being needed before they can exercise any official functions.

By order of Maj. Gen. E. R. S. Canby:

(Signed) WICK*MAN* HOFFMAN,
Ass't Adj't General.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. Acting Ass't Adj't Gen.

Document "116."

[Special Orders No. 108.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, May 14th, 1866.

[Extract.]

2. Official information having been received at these head-
88 quarters that John T. Monroe has been pardonned by the President, so much of paragraph 2, of Special Orders No. 63, current series from these headquarters, as suspends him from exercising the functions of his office as mayor of New Orleans, is hereby rescinded.

By order of Maj. Gen. E. R. S. Canby:

(Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen.

Document 117.

No. 13, new series.

MAYORALTY OF NEW ORLEANS,
City Hall, 14th day of June, 1866.

Whereas the municipal authorities are bound to preserve unobstructed for public use the streets of the city and the banks of the river, which are public places:

And whereas certain steamship and steamboats companies, and other persons, have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings: Be it, therefore—

Resolved, That the city surveyor be, and he is hereby, authorized and directed to cause to be removed immediately all fences, buildings, etc., and other obstructions found on the levee in front of the city.

(Signed) W'M McCULLOCH,
Pres't Board of Ass't Aldermen.

89 (Signed) GEORGE CLARK,
Pres't pro tem. Board of Aldermen.

Approved April 12th, 1866.

(Signed) GEORGE CLARK,
Mayor pro tem.

[SEAL.] JOHN W. OVERALL,
Secretary.

Ordinance No. 640 offered in evidence by defendant, June 16th, and filed June 18th, 1866.

MAYORALTY OF NEW ORLEANS,
City Hall, February 11th, 1853.

AN ORDINANCE to regulate the levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans.

ART. 1ST. *Be it ordained by the com'on council of the city of New Orleans*, That, from and after the 1st day of January, 1853, the levee or wharfage dues on ships and other deck vessels and steamship' arriving from sea, shall be fixed as follows: On all vessels of 1,000 tons and under, twenty cents per ton, and vessels of over one thousand tons, fifteen cents per ton; on all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

ART. 2. *Be it further ordained*, That, from and after the first of January, 1853, the levee dues on all steamboats which shall moor or land
90 in any part of the port of New Orleans, shall be fixed, as follows: Ten cents per ton, if in port not over five days, and five dollars per day after said five days shall have expired: providing, that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip:

ART. 3. *Be it further ordained*, That, from and after the 1st of January, 1853, the levee dues on flatboats, barges, etc., fully or in part laden with produce, materials, or merchandize of any kind shall be as follows: Flatboats not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; one hundred feet and over, thirteen dollars; and each barge measuring less than seventy feet and not twenty tons, eight dollars; on each steamboat hull used as a barge, twenty-five dollars; on each scow or coasting piroge, two dollars.

ART. 4. *Be it further ordained*, That so much of all existing ordinances as are inconsistent with the provisions of this ordinance be, and are hereby, repealed.

(Signed) W. C. C. CLAIBORNE,
Pres't Board of Aldermen.

" FRANS. ALPUENTE,
Pres't Board of Assistant Aldermen.

Approved Feb'uary 11th, 1853.

91 (Signed) A. D. CROSSMAN, *Mayor.*

A true copy:

(Signed) THEO. MARKS, *Secretary.* [SEAL.]

The pro tempore appointements made by Mr. Rosier will be vacated as soon as their successors are appointed.

By order of Maj. Gen'l E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Ass't Adj't General.

Official:

87 (Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen'l.

Document "115."

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., April 11th, 1866.

[Extract.]

3. By direction of the President, the suspension of John T. Monroe and James O. Nixon from the exercise of their functions of mayor and alderman of the city of New Orleans, respectively, as promulgated in Special Orders No. 63, paragraph 2, current series from these headquarters, will continue in force until they shall apply to the President, and received his special pardon, such pardon being needed before they can exercise any official functions.

By order of Maj. Gen. E. R. S. Canby:

(Signed) WICK*MAN* HOFFMAN,
Ass't Adj't General.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. Acting Ass't Adj't Gen.

Document "116."

[Special Orders No. 108.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, May 14th, 1866.

[Extract.]

2. Official information having been received at these head-
88 quarters that John T. Monroe has been pardonned by the President, so much of paragraph 2, of Special Orders No. 63, current servies from these headquarters, as suspends him from exercising the functions of his office as mayor of New Orleans, is hereby rescinded.

By order of Maj. Gen. E. R. S. Canby:

(Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. Act. Ass't Adj't Gen.

Document 117.

No. 13, new series.

MAYORALTY OF NEW ORLEANS,
City Hall, 14th day of June, 1866.

Whereas the municipal authorities are bound to preserve unobstructed for public use the streets of the city and the banks of the river, which are public places:

And whereas certain steamship and steamboats companies, and other persons, have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings: Be it, therefore—

Resolved, That the city surveyor be, and he is hereby, authorized and directed to cause to be removed immediately all fences, buildings, etc., and other obstructions found on the levee in front of the city.

(Signed) W'M McCULLOCH,
Pres't Board of Ass't Aldermen.

89 (Signed) GEORGE CLARK,
Pres't pro tem. Board of Aldermen.

Approved April 12th, 1866.

(Signed) GEORGE CLARK,
Mayor pro tem.

[SEAL.] JOHN W. OVERALL,
Secretary.

Ordinance No. 640 offered in evidence by defendant, June 16th, and filed June 18th, 1866.

MAYORALTY OF NEW ORLEANS,
City Hall, February 11th, 1853.

AN ORDINANCE to regulate the levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans.

ART. 1ST. *Be it ordained by the com'on council of the city of New Orleans*, That, from and after the 1st day of January, 1853, the levee or wharfage dues on ships and other deck vessels and steamship' arriving from sea, shall be fixed as follows: On all vessels of 1,000 tons and under, twenty cents per ton, and vessels of over one thousand tons, fifteen cents per ton; on all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

ART. 2. *Be it further ordained*, That, from and after the first of January, 1853, the levee dues on all steamboats which shall moor or land
90 in any part of the port of New Orleans, shall be fixed, as follows: Ten cents per ton, if in port not over five days, and five dollars per day after said five days shall have expired: providing, that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip:

ART. 3. *Be it further ordained*, That, from and after the 1st of January, 1853, the levee dues on flatboats, barges, etc., fully or in part laden with produce, materials, or merchandize of any kind shall be as follows: Flatboats not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; one hundred feet and over, thirteen dollars; and each barge measuring less than seventy feet and not twenty tons, eight dollars; on each steamboat hull used as a barge, twenty-five dollars; on each scow or coasting piroge, two dollars.

ART. 4. *Be it further ordained*, That so much of all existing ordinances as are inconsistent with the provisions of this ordinance be, and are hereby, repealed.

(Signed) W. C. C. CLAIBORNE,
Pres't Board of Aldermen.

" FRANS. ALPUENTE,
Pres't Board of Assistant Aldermen.

Approved Feb'uary 11th, 1853.

91 (Signed) A. D. CROSSMAN, *Mayor.*

A true copy:

(Signed) THEO. MARKS, *Secretary.* [SEAL.]

6305.—Resolution of the municipal government annexed to the lease on file.

No. 6305.

MAYORALTY OF N. ORLEANS,
City Hall, July 8th, 1865.

Resolved, That the mayor be, and he is hereby, authorized and empowered to enter into a contract *into a contract* with The New York Mail Steamship Company for the lease to said company, by virtue of a notarial act or otherwise, and the collection of the levee dues on their own and their chartered vessels, for the terms of ten years from the tenth day of July, 1865, of a certain section of the public levee, being six hundred feet front, by a depth of two hundred feet near Jackson square, a plan of which is on file in the office of the city surveyor, at a rental of eight thousand dollars per annum, payable in monthly instal'ments; the said company to have the privilege of inclosing said section in the manner set forth in the plan aforesaid; all repairs of wharves and all other improvements to be at the exclusive costs of the company, and all to be delivered to the at the expiration of the term mentioned, in
92 good order and condition, (the natural wear and tear excepted) without any charge to the city.

Resolved, That the mayor be, and he is hereby, authorized to make such additional terms and conditions not herein set forth as may seem in his judgement needed by the *by the* public interests.

Resolved, That all ordinances, and parts of ordinances in conflict with the foregoing, be, and they are hereby, declared null and void.

EDWARD AMES,
Chairman Bureau Streets and Landings.
G. BURKE,
Chairman Bureau of Finance.

Approved: July 8th, 1865.

HU. KENNEDY, *Mayor.*

COMPTROLLER'S OFFICE, CITY OF NEW ORLEANS,
$80,000.] *New Orleans, July 11th,* 1865.

The treasurer will please receive from A. Hero, not' of city of New Orleans, eighty thousand dollars, and credit wharves and levees, being for 120 notes signed by J. M. Courtenay, ag't, N. Y. M. S. S. Co. of $666 66⅔ each.

Received the above.

JOHN S. WALTON, *Treasurer.*
A. MOREE, *D'y Comptroller.*

Power of attorney.

Know all men by these presents that The New York Mail Steam-
93 ship Company, by James A. Ray*mond*, president, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint Asa'el S. Mansfield and John M. Courtenay their true and lawful attorneys, for them and in their name, place, and stead, to contract for and execute a lease on the part of said company to be given by The City of New Orleans to said company, of a certain portion of the levee in front of said city to be used by the ships forming the line of the company for a period of ten years from the date of the same, giving and

granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as they might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorneys or their substitutes shall lawfully or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and affixed the seal of the company, the 27th day of April, in the year one thousand eight hundred and sixty-five.

[SEAL.] JAMES A. RAYNOR,
Pres't N. Y. M. S. S. Co.

Sealed and delivered in the presence of—

94 STATE OF NEW YORK,
City County of N. York, ss:

Be it remembered that, on the twenty-eight' day of April, 1865, before me, Sylvester Lay, a notary public within and for the State of New York, duly commissioned and sworn, residing in the city of New York, personally appeared J. A. Raynor, known to me to be the president of The New York Mail Steamship Company, who, being duly sworn, says that he resides in the city of N. York; that the seal affixed to the foregoing power of attorney is the corporate seal of said company, and was affixed thereto by authority of said company, and that he subscribed the same by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

[SEAL.] SYLVESTER LAY,
Not. Public, New York.

$666 66⅔] NEW ORLEANS, 8*th July*, 1865.

On the 8th of August, 1865, after date, The New York Mail Steamship Company promise to the order of the treasurer of the city of New Orleans, at the office of said treasurer, six hundred and sixty-six .66⅔ dollars, value received in rent.

J. M. COURTENAY,
Ag't N. Y. M. S. S. Co.

No. 1. (Endorsed:)

J. S. WALTON, *Treasurer.*

95 Ne varietur.
New Orleans, 8th July, 1865.

ANDREW HERO, *Not. Pub.*

Document 120.—*Lease of wharf.*

The City of New Orleans to The New York Mail Steamship Co.:

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that, on this 9th day of January, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eight', before me, Andrew

Hero, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the honorable James F. Miller, acting mayor of the city of New Orleans, herein acting in his said capacity, and the said James F. Miller, acting as aforesaid, declared that, by virtue of the authority in him vested by a resolution of the finance committee of the city of New Orleans, adopted at their sitting on the first day of January, 1864, No. 6174, a true copy whereof is hereunto annexed for reference:

He does, by those presents, grant, bargain, sell, and confirm
96 unto The New York Mail Steamship Co., herein represented by J. A. Raynor, their duly qualified agent and attorney-in-fact, by virtue of a power of attorney duly executed by John Raynor, the president, and Robert J. Hubbard, the secretary and treasurer of said company, before James W. Fisher, a notary public of the city of New York, on the 24th of December, 1863, and hereto annexed for reference, the right of the collection of levee dues for a certain section of the public land, being two hundred and eighty feet on the levee front, near Jackson square, together with the privilege of the use of a slip of sixty-two feet laying between the steamship depot and the ferry-landing, according to a plan on file in the office of the city surveyor; also, with the privilege to said company to enclose said section in a manner satisfactory to the said city surveyor, for a term of five years, to commence on and be computed from the 1st of January, 1864, at a yearly rental of the sum of eight thousand dollars, to be paid in monthly instalments by notes of said company.

This lease is further made and accepted on the following conditions and stipulations, to wit:

First. If said company shall collect from any vessel not connected with or chartered by, or carrying freight for, said company, any fees for landing at said section, the said company shall pay the same over to the City of New Orleans.

97 The annual rental shall be paid in equal monthly installments, to be made on the first day of each month in each of the five years, the first month of which is to be paid in cash; and, in compliance with which, the said company has paid, through their attorney, the sum of six hundred and sixty-six dollars and sixty-six two-thirds cents, and furnish their 59 promissory notes, each for a like sum of six hundred and sixty-six dollars sixty-six and two-thirds cents, all dated on the first of January, 1864, and made payable as follows: On the first of February, March, April, May, June, July, August, September, October, November, and December, 1864, and on the first day of each month of the years 1865, 1866, 1867, and 1868; which said notes, after having been paraphed by me, notary, for identification herewith, were, with the said cash payment, delivered to said James F. Miller, mayor as aforesaid, who hereby acknowledges the receipt thereof.

It is well understood and agreed that, in case of non-payment of said above-mentioned notes, or any of them, The City of New Orleans reserves the right to declare this contract, ipso facto, null and void without applying to a court of justice.

Third. Said company will be permitted to occupy, whenever
98 necessary, the space or slip between said section and the second district ferry-landing, for which no additional charge shall be made.

Fourth. The City of New Orleans hereby binds and obligates itself to put said section in good condition and repair within two months

from the date hereof; and the said company hereby bind themselves to keep and deliver up to the said City of New Orleans the said section, in like good condition and repair, the usual wear and tear, accidents of Providence, or the destruction of the same by fire or flood excepted.

Fifth. Should said company fail to enjoy the use of said section, by reason of a blockade of the city or the capture of the city by any power hostile to the Government of the United States, then this contract, and all unpaid notes given for the same rental shall be null and void.

Thus done and passed in my office at New Orleans aforesaid, in the presence of Charles F. Barry and Theo. M. Hyde, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

The New York Mail Steamship Company,

By JAMES A. RAYNOR, *Att'y.*

JAMES F. MILLER,

Capt. U. S. A., Act. Mayor.

99 ANDREW HERO, *Not Pub.*

CH'S F. BARRY.

THEO. M. HYDE.

A true copy:

[SEAL.] ANDREW HERO, *Not. Pub.*

Documents annexed the foregoing lease.—Power of attorney to James A. Raynor.

Know all men by these presents that we, John Raynor, president, and Robert J. Hubbard, secretary and treasurer, of the New York Mail Steamship Co., have made, constituted, and appointed, and by these presents do make, constitute, and appoint James A. Raynor our true and lawful attorney, for us and in our names, places, and stead, to make and sign all contracts, leases, or other papers, to sign the checks or notes, or endorse the same, for the New York Mail Steamship Company, we hereby giving and granting unto the said attorney full power and authority in and about the premises, and generally to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

100 In witness whereof, we have hereunto set our hands and the corporate seal of the company the twenty-fourth day of December, one thousand eight hundred and sixty-three.

(Signed) JOHN RAYNOR, [SEAL.]

President N. Y. M. S. S. Co.

Sealed and delivered in presence of—

ROB'T J. HUBBARD,

Secretary and Treasurer N. Y. M. S. S. Co.

Be it known that, on the 24th day of December, in the year one thousand eight hundred and sixty-three, before me personally came John Raynor, president, and Robert J. Hubbard, secretary & treasurer, of the New York Mail Steamship Company, known to me to be the individuals described in, and who executed the foregoing power of attorney

and also known to me to be the president and secretary and treasurer of the said company, who severally acknowledge the above letter of attorney to be his act and deed.

In testimony whereof I have hereunto subscribed my name, and affixed my seal of office the day and year last above written.

(Signed) JAMES W. FISHER, [SEAL.]
Notary Public N. Y. City.

Copy. No. 6174.

MAYORALTY OF NEW ORLEANS,
City Hall, 5th day of Jan., 1864.

101 *Resolved*, That the mayor be, and is hereby, authorized and empowered to enter into a contract with The New York Mail Steamship Company for the sale to said company of the collection of levee dues for the term of five years from January 1st, 1864, for a certain section of the public levee, being two hundred and eighty feet on the levee front, near Jackson square, a plan of which said section is on file in the office of the city surveyor, at a rental of eight thousand dollars per annum; said company to have the privilege to enclose said section in a manner satisfactory to the said city surveyor.

Resolved, That the mayor be authorized to make such additional terms and conditions as in said judgment the public interest may require.

(Signed) D. S. DEWES,
Chairman Bureau S'ts & L'd'gs.
" E. H. DURELL,
Chairman Bureau of Finance.

Approved January 6th, 1864.
(Signed) JAMES F. MILLER,
Capt. U. S. A., Acting Mayor.

A true copy.
Attest: (Signed) D. L. GIBBENS, *Sec'y.* [SEAL.]

COMPTROLLER'S OFFICE, CITY HALL,
New Orleans, January 11th, 1864.

102 The treasurer will please received from Andrew Hero, city notary, fifty-nine promissory notes, drawn by The New York Mail Steamship Company, due on the 1st day of February, 1864, and monthly thereafter, amounting to thirty-nine thousand three hundred and thirty-three and $\frac{34}{100}$ dollars—59 notes for $39,333 34.

Received the above.
(Signed) JOHN S. WALTON, *Treasurer.*
" J. W. LASTER, *D'y Comptroller.*

$666 66.] COMPTROLLER'S OFFICE, CITY OF N. ORLEANS,
New Orleans, Jan'y 11th, 1864.

The treasurer will please receive from Andrew Hero, city notary, six hundred and sixty-six and $\frac{66}{100}$ dollars, and credit wharves and levee, being for cash payment of The N. Y. Mail S. S. Company for lease.

Received the above.
(Signed) JOHN S. WALTON, *Treasurer.*
J. W. LASTER, *D'y Comptroller.*

STATE OF LOUISIANA,
City of New Orleans:

I, the undersigned notary, do hereby certify the foregoing to be a true and correct copies of the documents annexed to the original act of lease passed in this office on the 9th January, 1864.

In faith whereof I grant these presents, under my signature and seal of office, on this 26th day of May, A. D. 1866.

[SEAL.] ANDREW HERO,
Not. Pub.

103 *Document* 119.—*Lease of wharves, first section, city of New Orleans, to John Baker.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known that, on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the independence of the United States of America, before me, Eusebe Bouny, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. John Baker, also of this city; and the said Gerard Stith, mayor as aforesaid, declared that, by virtue of the authority in him vested by resolution No. 4137, passed by the com'on council of the city of New Orleans, and approved on the nineteenth instant, copy of which resolutions is hereto annexed for reference and confirmation of the sale, and adjudication made by the city controller on the sixteenth instant, as it will appear by reference to the process verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm*ed*
unto the said John Baker the revenues of all the wharves and
104 landings of this city lying and being upon the Mississippi River, and contained within the upper or southern limit of said city and the upper line of Felicity road, constituting the first section of the wharves of said city, said revenues to be collectable, under existing ordinances, upon all ships, vessels, steamships, steamboats, flatboats, and water crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending with the thirtieth June, eighteen hundred and sixty-three.

And, for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said John Baker to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant that the said John Baker shall not sell, transfer, assign, set over, subrogate, or sub-lease his right, title, and interest in the revenues of said section to any persons or persons whatsoever; and, in case of any sale, transfer, assignment, subrogation, or sub-lease, made by any person or persons of the rights or interest acquired under and by virtue
of this contract, such sale, transfer, assignment, subrogation, or
105 sub-lease shall work a forfeiture of said rights and interest, so acquired as aforesaid, and the same shall revert to The City of New Orleans.

That The City of New Orleans reserves to herself and excepts from said sale each and every landing and ferry wharf now existing, and each

and every nuisance wharf now existing, and all revenues arising from the same; and also, a portion of the wharves of one hundred and fifty feet on the river front, starting from the upper limit of the city and running down, for a ferry-landing, is reserved by the city and the revenues thereof.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section adjudicated to him in the condition in which the same may be on the first of October next, (1858,) and said purchaser or lessee so accepting and taking possession of the said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the thirtieth of June, 1863, provided that the lessee shall have no right to build any shed, warehouse
106 on platform of the said wharves without the permission of the com'on council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river, that is to say, the levee comprised within the section herein sold shall extend back to the line of Water street, from upper line of the fourth district to Adele street, and to Thoupitoulas street and New Levee streets, from Adele to Felicity road; and it hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and used, or in any manner dispose, as may be deem' expedient by the com'on council, of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the com-'on council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repairs of the levees required to be made by the said purchaser or lessee as aforesaid shall consist of grading the same, according to the grades already established; in covering the same with hard substances, such as lake or oyster shells and gravel; in keeping the same always in good order by filling up all holes, on their first appear-
107 ance, with hard substances as above mentioned, in filling up with river sand all parts of the same which may cave in or sink below the grades aforesaid; and in keepings the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the com'on council, filled up such parts of the batture, and build such levees as said com'on council may deem necessary, as well as all new bulkheads.

That the repairs of the wharves to be made by the purchaser or lessee, under this contract, shall consists in repairing all holes in the flooring of the wharves and incline planes, immediately upon their first appearance; in raising all portions of the wharves which may have sunk, or which may sink below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves from which general decay may require the same; and extending into the river all wharves which may require extension, so as to have at all time' a depth of water of twenty feet at the water line of each and every wharf used for the landing and discharge of ships, and depth of water ten
108 feet at the water-line of each and every wharf used for the landing and discharge of steamboats.

That, in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at

one *hand*, and nine by nine inches square at the other *hand*, and shall be driven from fifteen to twenty feet into the solid ground at distances of ten feet from the centres. The heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall received and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drags nails one inch square by eighteen inches long. The stringers used shall be at least ten inches square, shall rests at right angles on the caps at distances of five feet from the centres, and shall be strongly fastened at each intersection with a cap with drag nails one inch square by sixteen inches long. The plank used for the flooring shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the
109 stringers with seven-inch pressed spikes, two at each end of each plank, and one at each intersections of the stringers.

That each and every wharf used for the landing and discharge of steamboats shall have an inclined plane, projecting from the foot thereof, of at least thirty feet in width. That on the outside of said inclined plane, and adjoining the last row of piles thereof, there shall be a driver, a row of piles, which shall received a cap eleven by eleven inches square, with nine nine-inch tenons and mortises; on the top of said cap shall rest a fender-cap, twelves inches square, which shall be fastened to the two other caps at a distance of five feet, with screw-bolts of one and one-half inches in diameter, and of suitable length. That the four rows of piles of each inclined plane shall be braced every ten feet, with ten-by-ten-inches braces, which shall be fastened to each pile with screw-bolts of one inch diameter, and of suitable length; and that the purchaser or lessee in accepting and taking possession of said wharves, in accordance with this contract, shall repair and keep in good order and condition the whole of said term of four years and nine months, such inclined planes as aforesaid, as do now exist, connected with the wharves or wharf so accepted and taken possession of; and in case there
110 shall be no inclined plane, as above required, at the time of accepting and taking possession of said wharf or wharves, then the said purchaser or lessee shall cause said inclined plane to be built at his expense, and shall keep the same in repair as aforesaid, during the whole of said term of four years and nine months.

That each and every wharf used for the landing and discharge of ships, a row of fender-piles shall be driven, each pile ten feet apart and fastened in a strong manner to the piles of the wharves, with at least two screw-bolts of one and a half inches in diameter; that on the front of said wharves two fenders-caps shall be placed, one on a level with the flooring of the wharf, and the other at five feet above low-water mark. Said fenders shall be twelve by twelve inches square, and to be fastened to the piles of the wharf with screw-bolts one and a half inches in diameter; and that said lessee in taking possession of said wharves shall repair and keep in good order and condition during the whole term of this lease, such fender-piles and fender-caps as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fenders-caps, as above required, at
111 the time of accepting and taking possession of said wharves, then the said lessee shall cause said fender-piles and fender-caps to be driven and placed as above required, at his costs, and shall keep the same in repair during the whole of said terms of four years and nine months.

That at each and every wharf used for the landing and discharge of

steamships, fenders shall be driven at equal distances of twenty feet, and each fender shall be composed of four piles, eleven by eleven inches *inches* square, strongly fastened together, and to the wharves, with at least six or seven bolts of one and a half inches in diameter; that the four outside rows of piles of each and every wharf used for the landing and discharge of steamships, and of ships, shall be braced every ten feet, with ten-by-ten-inches braces, which shall be fastened to each of said piles with screw-bolts of one inch in diameter; and that said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of four years and nine months, the length of this lease, such fenders and braces as do now exist, connected with the wharves so accepted by the said lessee;

112 and in case there shall be no such fenders or braces at the time of accepting and taking possession of said wharves, then said lessee shall cause said fenders to be driven, and said braces to be made at his own cost, and shall keep the same in good repair and condition during the whole of said term of four years and nine months.

That in all the wharves accepted and taken possession of by said John Baker, lessee, mooring-piles, twelve inches square, shall be driven as follows, to wit: On the steamboat wharves, single piles along the inclined planes, at distances of forty feet from the centres; on the steamship and ship wharves, double piles, wheresoever the harbor-master shall direct.

That each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharf with at least t'o screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of said wharf, shall repair and keep in good order and condition during the whole of said term of four years and nine months such moorings-piles as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no mooring-piles, as above required, at the time of accepting and taking possession of said

113 wharf or wharves as aforesaid, then said lessee shall cause said mooring-piles to be driven and fastened at his costs, and shall keep the same in good repair during the whole of said term of four years and nine months.

That said John Baker, lessee, shall be bound, whenever ordered by the com'on council, to build all additional new wharves that may be necessary; and he shall further immediately cause to be constructed all wharves that may be necessary for the landing of flatboats.

That all works and repairs to be done by this contract, shall be done under the supervision of the surveyor and chairmen of the committees on streets and landings of the two boards of the com'on council, and in case of refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith at the expense of said lessee.

That all works and repairs required to be done by this contract shall be done by said John Baker, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood that in case of neglect or failure by said John Baker, lessee, to commence or finish the works within the time

114 mentioned in the orders of the surveyor, the com'on council shall have the right to annul this lease without putting the lessee in default, as required by article 1905 of the civil code and without applying to a court of justice to annul the same, and without indemnity to such lessee; and it is also well understood that, in case said lessee

should fail to make or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city, and that the com'on council shall have the right to resell the revenues of said section for account and risk of said defaulting lessee and his sureties.

That the com'on council may revoked, set aside, and annul this contract whenever the said lessee shall neglect or fail to pay at maturity, any note given in part payment of the purchase price of the aforesaid revenues; and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable, within the same, or resell such section for the account and risk of said John Baker, as the council may deem proper.

That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage planks, &c., used for mooring vessels and for stagging for vessels, and shall give to the surveyor a receipt for
115 the same, and shall at all times keep on hand, for the use of vessels, a sufficient supply of the same, and shall return to the city at the end of this lease an inventory of equal amount and value of the same.

That the said lessee and his sureties shall, in solido, be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees, shall continue subject to the police regulations now governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water crafts, shall pay the dues collected under existing ordinances to the aforesaid lessee in his section; that in case of removal of any ship or water craft from one section to another, the dues so collectable shall be divided pro rata between the lessees of the section in which steamboats, ships, or any other vessel may lie, according to the number of days said ship or vessel lie and be within the several sections.

That all that extent of the port of the first section comprised
116 between Toledano and Fifth or Washington streets and between Second and Felicity streets, be, and the same is hereby, appropriated as a landing for the shipping, and that all that extent of the port of the first section comprised within Second and Fifth streets, is appropriated as a landing for flatboats.

And, in order to come to a better and full understanding, the contracting parties do further agree to carry out and execute in good faith this contract to all its intents and purposes, according to the terms, conditions and speculations contained in ordinance No. 4007 of the com'on council, entitled, "An ordinances concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed and signed, ne varietur, by the contracting parties, the undersigned witnesses, and notary, in order to be identified herewith.

This privilege is granted to the said John Baker for and in consideration of the price and sum of one hundred and fifteen thousand dollars; in payment of which, the said John Baker has furnished fifty-seven
117 notes, dated this day, drawn by him to the order of, and endorsed by, W. N. Betson and C. A. Eager, and payable at the Louisiana State Bank, to wit:

Three notes of thirteen hundred and twenty-one dollars and eighty-four cents each, ($1,321 84,) payable, respectively, on the first day of each of the *three* months of January, February, March, April, May, and June, eighteen hundred and fifty-nine.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable, respectively, on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-nine.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable, respectively, the first day of each of the months of January, Feb'uary, March, April, May, and June, eighteen hundred and sixty.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable, respectively, on the first of July, August, September, October, November, December, 1860.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable, respectively, on the first day of January, Feb'uary, March, April, May, and June, 1861.

118 Six notes of $1,321 84 each, payable, respectively, on the first of July, August, September, October, November, and December, 1861.

This reference approved.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable, respectively, on the first of January, Feb'uary, March, April, May, and June, eighteen hundred and sixty-two.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable, respectively, on the first day of July August, September, October, November, and December, eighteen hundred and sixty-two.

Five notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable, respectively, on the first of January, Feb'uary, March, April, and May, eighteen hundred and sixty-three.

And lastly, one note of two thousand six hundred and forty-three dollars and eighty-nine cents, payable on the first of June, eighteen hundred and sixty-three.

Which notes being signed, ne varietur, by the undersigned no-
119 tary, to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally intervened in these presents, Messrs. William Nichols Batson and Charles Austin Eager, both of this city, who, having read what is above written, declared that they hereby g'arantee to the city of New Orleans the faithful performance of the foregoing contract by the said John Baker, and bind themselves, jointly and in solido, in favor of The City of New Orleans, in the sum of twenty-eight thousand seven hundred and fifty dollars, payable on demand to said corporation.

Now, the condition of the above-written bonds or obligation is such, that if the said John Baker shall well, truly, and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void; but, otherwise, to be and remain in full force and virtue, the said W. N. Batson and C. A. Eager hereby waiving the benifit of division and discussion granted by law to sureties.

Done and passed in my office the month, day, and year first above written, in presence of Paul E. Theard and Oscar Leblanc, competent

witnesses, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

120 (Original signed) JOHN BAKER.
W'M N. WATSON.
C. A. EAGER.
GERARD STITH, *Mayor.*
PAUL E. THEARD.
OSCAR LE BLANC.
E. BONNEY, *Not. Pub.*

Correct:

S. S. MITCHELL, *City Att'y.*

A true copy:
New Orleans, 18th September, 1858.
(Signed) E. BONNEY, *Not. Pub.*

Document 121.—*Laws of Louisiana.*

AN ACT to amend an act entitled "An act to consolidate the city of New Orleans, and to provide for the government of the city of New Orleans and the administration of the affairs thereof."

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened,* That section fourth, fifth, eight, and nine of an act entitled "An act to amend an act entitled 'An act to consolidate the city of New Orleans, and to provide for the government of the city of New Orleans and the administration of the affairs thereof,'" approved March 20th, 1856, which read as follows:

"SECT. 4. *Be it further enacted, etc.,* That, at the first sittings of the common council in 1856, the aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of
121 one year, and the seats of the second class shall be vacated at the end of two years: *Provided,* That one-half of the aldermen of each districts shall constitute the first class, and that each annual election after that of 1856, a sufficient number of aldermen shall be elected to fill the places of those going out.

"SECTION 5TH. *Be it further enacted, etc.,* That, at the first sitting of the com'on council in 1856, the assistant aldermen shall be divided by lots into classes. The seat of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the
This reference approved. end of two years: *Provided,* That seven of the assistant aldermen shall constitute the first class, and at each annual election after that of 1856 a sufficient number of assistant aldermen shall be elected to fill the places of those going out.

"SECTION 8. *Be it further enacted, etc.,* That the election of mayor, controller, and street commissioner shall take place every two years on the first Monday of June. The election for recorders shall take place every two years, and one class of the aldermen shall take place on the first Monday of June every year. The mayor, controller, and street commissioner shall be elected by general ticket, the recorders
122 by district ticket, and the mayor, controller, and street commissioner, recorders, and aldermen shall enter upon the duties of their office on the third Monday of June following their election. The recorder's districts shall be the same as provided by section second of this act.

"SECTION 9. *Be it further enacted, etc.,* That the election of one class of assistant aldermen shall take place on the first Monday of June

every year, and they shall enter upon the duties of their office on the third Monday of June following:"

Shall be amended and re-enacted so as to read as follows:

SECTION 4. *Be it further enacted, etc.*, That, at the first sitting of the com'on council in 1866, the aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the end of two years: *Provided*, That one-half of the aldermen of each district shall constitute the first class, and at each annual election after that of 1866, a sufficient number of aldermen shall be elected to fill the places of those going out.

SECTION 5. *Be it further enacted, etc.*, That, at the first sitting
123 of the com'on council in 1866, the assistant aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the end of two years: *Provided*, That seven of the assistant aldermen shall constitute the first class, and at each annual election, after that of 1866, a sufficient number of assistant aldermen shall be elected to fill the places of those going out.

SECTION 8. *Be it further enacted, etc.*, That the election of mayor, controller, and street commissioner shall take place every two years, on the second Monday of March. The election of recorders shall take place every two years, and one class of the aldermen shall take place on the second Monday of March every year. The mayor, controller, and street commissioner, recorders, and aldermen shall enter upon the duties of their office on third Monday of March following their election. The recorder's district shall be the same as provided by section second of this act.

SECTION 9. *Be it further enacted, etc.*, That the election of one class of assistant aldermen shall take place on the second Monday of
124 March of every year, and they shall enter upon the duties of their office on the third Monday of March following.

SECTION 2. *Be it further enacted, etc.*, That all laws or parts of laws contrary to this act be, and they are hereby, repealed.

SECTION 3. *Be it further enacted, etc.*, That this act takes effect from and after its passage.

(Signed) DUNCAN S. CAGE,
Speaker of the House of Representatives.

(Signed ALBERT WOORHIES,
Lieut. Governor and President of Senate.

Approved February 26th, 1866.

(Signed) J. MADISON WELLS,
Governor of the State of Louisiana.

A true copy:

(Signed) J. H. HARDY,
Secretary of State.

Order continuance.—From the minutes June 16th, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

This cause was resumed, all the counsel engage' being present, and, after hearing further evidence and argument, the cause is continued until Monday next, at 11 a. m.

Note of evidence.—Filed June 18th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

125 Defendant offered certified copy of wharfage ordinance 122, also, correspondence 123, 124, 125.

Document 122.

No. 640.

MAYORALITY OF NEW ORLEANS,
City Hall, day of , 186 .

AN ORDINANCE to regulate the levees dues and wharfage on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans.

ART. 1ST. *Be it ordained by the com'on council of the city of New Orleans*, That, from and after the 1st of January, 1853, the levee or wharfage dues on ships and other deck vessels and steamships arriving from sea, shall be fixed as follows: On all vessels of 1,000 tons and under, twenty cents per ton; and excess of tonnage over 1,000 tons, fifteen cents per ton; on all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

ART. 2D. *Be it further ordained*, That, from and after the 1st of January, 1853, the levee dues on all steamboats which shall moor or land in any part of the port of New Orleans, shall be fixed as follows: Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired: *Provided*, That boats arriving and
126 departing more than once in each week shall pay only seven cents per ton each trip.

ART. 3D. *Be it further ordained*, That, from and after the 1st January, 1853, the levee dues on flatboats, barges, &c., fully or part laden with produce, materials, or merchandize of any kind, shall be as follows: Flatboats, not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; on each barge, measuring less than seventy feet and not over twenty tons, eight dollars; on each steamboat hull used as barge, twenty-five dollars; on each scow or coasting pirogue, two dollars.

ART. 4TH. *Be it further ordained*, That so much of all existing ordinances as are inconsistent with the provisions of this ordinance be, and are hereby, repealed.

(Signed) W. C. C. CLAIBORNE,
President Board of Aldermen.
" FRANS ALPUENTE,
Pres't Board of Assistant Ald.

Approved February 11th, 1863.
(Signed) A. D. CROSSMAN, *Mayor.*

A true copy. Attest:
(Signed) THO. MARKS, [SEAL.]
Secretary.

Document 123.

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., Aug't 23d, 1865.

Hon. HUGH KENNEDY,
127 *Mayor of the City of New Orleans, La.*

SIR: I am instructed by the major general commanding to notify you that the levee and wharf space hereafter described has been selected and reserved for military purposes, and will not be included in any arrangements that may be made by the city authorities for leasing the levee and wharves.

1st. The levee and wharf space between Nun and Jackson streets.

2d. 300 feet from custom-house office landing to Canal-street ferry-landing 120 feet deep from the bank of the river, and situated between Crossman and Canal streets.

3d. Between 1st and 4th streets.

4th. For about 4 weeks the use of posts 26, 27, and 28 will be required.

5th. So long as the St. Joseph-st. Railroad is run by the U. S., the levees and wharves between Julia and Lafayette streets, and the space occupied by the railway and depot along the entire levee and covered by the railway.

The same rule will apply to any wharf or levee space that is occupied by the Navy or Treasury Departements.

The major general has learned that the city authorities contemplate the alienation of this property for a long term of years, and he
128 thinks it proper to suggest, for your consideration, the fact that the title to all this property is in the United States as captured.

The authorities of the Government have conceded to the city the occupation, use, and profits of so much of it as is not required for public purposes, but the title by capture has not yet, so far as he has been advised, been relinquish'd by the Executive Department of the General Government, and until that is done any leases or other dispositions of this property should be for a short period.

I am further instructed to say that the commanding general has learned only by accident of the action contemplated by the city authorities, and that he desires that any future action that may be contemplated by the city authorities in which the interest of the United States are, directly or indirectly, involved, be seasonably reported for action here, or be submitted to the proper authorities at Washington.

Very respectfully, your ob't servant,
(Signed) GEO. L. ANDREWS,
Brig. Gen. Chief of Staff.

A true copy:
(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document 124.

STATE OF LOUISIANA:

MAYORALITY OF N. O.,
129 *City Hall, 24th day of Aug.,* 1865.

Maj. Gen. E. R. S. CANBY,
Com'd'g Dep't of Louisiana.

GENERAL: Late last evening I had the honor to received, at my dwelling, a communication from Brig. Gen'l Geo. L. Andrews, chief of staff,

written by your order, in relation to the leasing of the steamboats wharves by the city authorities, which the order in question inhibits on several grounds, viz:

1st. That such portions of the wharves in question as may be required by the Army, Navy, and Treasury Departements of the National Government, must be reserved for their use.

2d. That the leases, if made, should be for a shorter period then ten years.

3d. That the title to all this property is in the United States, as captured.

I had not the slightest idea, general, in advertising this important property for lease, as one of a number of comprehensive measures which I had design for, and which in my opinion are indispensable to the extrication of this city from its bankrupt condition, that I was either dealing with that which was not the city's, or infringing upon any space regarded by the Departements named above as absolutely necessary for the public service. Had I been so aware, your present
130 order would not have been requisite.

By estimates of the proper municipal officers, two hundred thousand dollars are now demanded to make the wharf accom'odation of this city suitable to the demand of its commerce. This, it is needless for me to tell the commanding general, is not to be found in the empty treasury of this corporation, nor indeed can I discover how the innumerable demands upon the latter are to be met, when the tax payers, who are in default from one to four years, can be counted by thousands; the most valuable property is seized and held by the Treasury and other agents, and the only other legitimate expedients, that are desirable for escape from this state of affairs, are declared incompatible with the military situation here.

One of two courses, with all proper deference and respect, I would suggest as reasonable, namely, either to place the sources of revenue I have enumerated in the hands of the local authorities, to be held subject to a final abritrament, or to leave them entirely in the control of Federal authority, the Government advancing the means to keep them from great damage or permanent annihilation.

131 This view was the one entertained by Major General Hulburt, when he held command here, and if accomplished, its correctness, I think, will be conceded.

While I cannot, general, do otherwise, in view of the best interests of New Orleans, than deeply regret the military necessity which impels me to cancel the sale of the receipts from wharfage which had been made, I have the additional pain, caused by what I cannot but believe will be the President's dissap'ointments, as he months ago expressed his intention of having the just claims of this city against the various Departments of government promptly and satisfactorily adjusted.

I have the honor to be, general, *your*, very respectfully, your servant.

(Signed) HU. KENNEDY, *Mayor*.

A true copy:

DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

Document 125.

MAYORALITY OF N. ORLEANS,
City Hall, 6th day of Sept., 1865.

Major General E. R. S. CANBY,
Com'd'g Departement of La.

GENERAL: Your communication of the 4th instant, received
132 yesterday, I have the honor to acknowledge.

Your determination to submit to the War Departement certain matters likely to be affected by the leasing of the wharf property of this city, as proposed by the city government, necessarily terminates and cancels, for the present and indefinitely, the adjudication already made. The time that must elapse before it will be possible for the War Departement to come to any conclusion on your recom'endations will be so long that I am compelled to adopt one of two alternatives, namely, either to allow the wharves to fall into utter ruin, and thereby destroy all the facilities now given to commerce at this port, or at once set about making the indispensable reparations and constructions. The last I have endeavored to avoid; for it will cost, by estimate, a quarter of a million of dollars, and this sum can only be provided by the dangerous expedient of increasing floating debt, now exceeding twenty-seven hundred thousand dollars.

By the best computation I have been able to make the annual loss to the city from the present mode of managing the wharves cannot be less than two hundred thousand, and probably may reach three hundred thousand, dollars. My plan would have secured better
133 and cheaper accom'odation to shipping, and, instead of the city loosing the enormous sum above-stated, it would, without the expenditure of a dime, *that* in the annual receipt of one hundred and fifty thousand dollars. I am not aware, nor have I heard, of any single citizen of intelligence to dispute my views, or to deprecate their adoption. On the contrary, they have commanded themselves to the approval of every candide and sensible mind, and they have obtained it. My financial plan for the coming year embraced the saving here indicated; and, with the direct and regular income I had a right to calculate upon as almost certain to accrue from the sale of street railroad privileges, which I estimated as equal to half a million of dollars; to which, if we hadd the reduction of expense in the street commissioner's departement, in the police, and other savings made and practicable, without diminishing efficiency, I was sanguine of being able to economize in outlays at least one million of dollars, and to diminish the burdens upon industry proportionally next year.

I deeply regret, both on account of people and Government, that you felt compelled to scatter these financial plans to the winds, by interposing insuperable obstacles to their realizations.

134 I, however, quite agree with you, general, as every one else does, that the Government is not responsible for the bankrupt condition of the city treasury; and I beg to correct what must be unintentional mistake in your letter, wherein you erroneously allege that, in my correspondence with you, "I cast a reproach" upon its officers and agents of this character. As to the plunder of both State and city treasuries, I believe all are agreed; who the guilty are, the Government, I doubt not, is fully and correctly advised. Your reference to my letter to the President, in relation to the surrender of the New Orleans and Jackson and New Orleans and Opelousas Railroads, to their stockholders, makes it proper for me to say that, in the railroad affairs, as in everything else, I have

faithfully and undeviatingly adhered to the verbal instructions given me by the President.

When I found that the military authorities had surrendered the New Orleans and Jackson Railroad to its old direction, who had run it in rebel interests for four years, and never rendered any account, and all of whom, with two exceptions, were strangers to, or fugitives from the State, and hostile to the Government, I regretted it, as it made an em-
135 barrassment I have not been able to surmount in carrying out the President's wishes, namely, that new directors of reliably loyal sentiments should be elected before a transfer of the roads in question was made. I proceeded to have the elections thus required by the President. I reported my proceedings, step by step, to him, and I have, with the profound respect I entertained for him, left the decision to him of the question whether an uncondoned rebel could be elected president of the New Orleans and Jackson Railroad, with associates, such as the directors are known to be, or not. I do not, general, impertinently intrude my opinions upon the Government. I report my conduct and my acts, uncolored, for its approval, or censure, if the latter is merited, and await with perfect confidence its decision.

Even when assailed by the buffoonery of a journal which only has a recognized place from a presumed connection with the military authorities of this Department, I made no complaint, nor, frequently as my exertions to improve the administration of this city have been abruptly forbidden, have I questioned the motive. If I was pained by the action of the military authorities, I thought that an officer, however
136 humble, who had been honored by the President with the responsible and exalted trust of the chief magistracy of this place, was entitled to, at least, respectful consideration, and that a rude or contumelious nullification of acts of his, which had caused him many anxious and restless *honors*, could only embolden the enemies of order and unity and gladden schismatics, whose only study is how to plunder successfully and damage the Union.

Sincerely regretting, general, my inability to make the administration of my charge agre'able to you, and yet to be in conformity with my instructions from the President, and reiterating my assurance that nothing shall swerve me from the course prescribed to me by the latter in even the smallest particular, I have the honor to be, general, very respectfully, your obedient servant.

(Signed) HU. KENNEDY,
Mayor.

A true copy.
(Signed) DE WITT CLINTON,
Brevet Lieut. Col., Judge Advocate.

Order continuance.—From the minutes 18th June, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

This cause was resumed, all the counsel being present—
137 And, after hearing further evidence and argument, the cause is continued until to-morrow at 11 a. m.

Order continuance.—Minutes of June 19th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

This cause was resumed, all the counsel engage' being present—
And, after hearing further argument, the cause is continued until tomorrow at 11 a. m.

Order continuance.—From the minutes of June 20th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

This cause was resumed, all the counsel engaged being present—
And, after hearing further argument, the cause is continued until tomorrow at 11 o'clock a. m.

Submission of cause.—Minutes of June 21st, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } 3852.

This cause was resumed, and, after hearing the closing argument of plaintiff's counsel, the court took time to advise.

Judgement—From judgement docket No. 5, pag' 16.

138 Circuit court of the United States, sixth circuit, and eastern district of Louisiana. April term, 1866.

NEW ORLEANS, *Saturday, June 30th*, 1866.

Court met pursuant to adjournment—present, the Hon. E. H. Durell, dis't judge.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

For reasons orally assigned, it is ordered, adjudged, and decreed that the injunction herein sued out be maintained and held in force dur, ing the term of ten years from the 8th day of July, 1865, and that The City of New Orleans, her agents, and officers, and employés be prohibited and restrained during the said period from interfering with or disturbing the plaintiffs in the quiet and exclusive possession of the premises described in the petition, and in the contract of lease on file.

It is further ordered, adjudged, and decreed, that the plaintiffs do recover from The City of New Orleans, the sum of eight thousand dollars as damage and cost of suit.

And it is further ordered and decreed that, on the rule for a contempt of court, George Clark, late acting mayor of the city of New Orleans, be condemned to pay a fine of three hundred dollars, which
139 shall be deposited in the United States Treasury.

Judgment rendered June 30th, 1866.

Judgment signed June 30th, 1866.

(Signed) E. H. DURELL, *Judge.*

Bill of exceptions.—Filed July 5th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

Be it remembered that, on the trial of this cause in the circuit court of the United States for the sixth circuit, and eastern district of Louisiana, defendant, by counsel, offered in evidence the documents hereto annexed and made part of this bill of exception being, "General Order No. 11," dated "Headquarters Department of Louisiana, New Orleans, La., Feb'uary 9th, 1866," and signed "by order of Major General E. R. S. Canby, Wickham Hoffman, assistant adjutant general."

To the reception of which document as evidence, plaintiff, by counsel, objected, on the ground that said general order being made subsequently to the lease from the mayor to plaintiff, mentioned in the petition, was an interference with vested rights of plaintiff, and was, therefore, inadmissible; and the court sustained the objection, and rejected the said general order as evidence in the cause.

And defendant, by consent, excepted to the ruling of the court
140 rejected said evidence as erroneous in law, for this, that the mayor of New Orleans, or acting mayor, Hugh Kennedy, who made the lease of the eight' of June, 1865, to defendant, was acting under military authority of the United States; that the city of New Orleans was then govern' by martial law, and had been so since May, 1862, and continued to be so until March, 1866; that, during all said period of time, the Constitution and the civil laws were and remained superceded and inoperative in New Orleans, the will of the commanding general of the department being the supreme law therein; that Major General E. R. S. Canby, of the United States Army, was the commanding general of the Military Department of Louisiana, (in which New Orleans was comprised,) on the 9th Feb'uary, 1866.

And be it further remembered that, on the trial of this case and after J. M. Courtenay, a witness called by plaintiffs, had been examined and had testified that plaintiffs had entered at New Orleans custom-house in the year ending April 30th, 1866, seventy-five steamers, of which the aggregate tonnage was 139,181 tons, and had given evidence as to the whole tonnage arriving at the port of New Orleans from coastwise and foreign ports, and evidence tending and designed to show that
141 the city derived great benefit and advantage from the contract with plaintiffs; and after plaintiffs had closed their evidence, defendant offered to prove by John T. Monroe and George Clark, witnesses sworn in the cause, that the wharfage and levee dues of the steamers, entered by plaintiffs at the New Orleans custom-house in the year ending April 30th, 1866, if charged according to the rates fixed by the city ordinances would have amounted to twenty-three thousand six hundred and forty-three dollars, and to contradict the statements made by the witness J. M. Courtenay, above mentioned; but counsel for plaintiff objected to the exception of the evidence of said Monroe and Clark upon the points above-stated, on the ground that said evidence was irrelevant and inadmissible, which objection was sustained by the court, and the evidence rejected, and defendant, by counsel, excepted to the ruling of the court, rejected said evidence as erroneous in law, for this, that this being action sounding in damages for a tort it is competent for defendant to offer all evidence to contradict and explain the testimony of witnesses or plaintiffs, and to mitigate damages.

3. And it is further remembered that, on the trial of this case the
142 counsels of plaintiffs then on the stand to state to the court what was the custom in New York and other large cities as to the leasing their wharves; to which question, defendant, by counsel, objected on the ground that it was irrelevant; that the defence in this case was based upon the peculiar law of Louisiana; but the court overruled the objection and allowed the question to be answered. To which ruling of the court, defendant, by counsel, excepted as erroneous in the law, for this, that the customs or even the laws of other countries cannot control the laws of property and contracts in Louisiana, bearing upon parties and objects exclusively within that State.

And the defendant thereupon, in open court and before the trial had concluded, tendered to the presiding judge this his bill of exceptions to the three several rulings of the court above related, and respectfully request his honor to sign and seal the said bill, which was done in open court and during the trial, this 18th day of June, 1866.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error.—Filed July 5th, 1866.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

To the honorable circuit court of the United States for the sixth
143 circuit and eastern district of Louisiana:

The petition of The City of New Orleans, defendant herein, respectfully shows that it is aggreived by the final judgement rendered herein against it, the suit of The New York Mail Steamship Company vs. The City of New Orleans, numbered 3852 on the docket of this court, and is informed there is error to its prejudice, and is desirous that a writ of error be allowed it therefrom to the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error be allowed it, returnable to the next term of the Supreme Court of the United States, and that the same may operate a' a supersedeas, upon its giving bond, with good and sufficient surety, in such sum as the court may direct and order.

And, as in duty bound, etc.

(Signed) BUCHANAN & GILMORE,
Att'y of Petitioner.

Let a writ of error be allowed as a supersedeas as to the damages, on petitioner giving bond, with good and sufficient surety, in the sum of ten thousand dollars.

(Signed) E. H. DURELL, *Judge.*
JULY 5TH, 1866.

144 *Bond for writ of error.—Filed July 5th, 1866.*

Know all men by these presents that we, The City of New Orleans, as principal, and Williamson Smith and Francis Surges, as sureties, are held and firmly bound unto The New York Mail Steamship Company, its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed

with our seals, and dated this fifth day of July, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas lately at a circuit court of the United States, sixth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein The New York Mail Steamship Company is plaintiff, and The City of New Orleans is defendant, No. 3852 of the docket of said court, judgment was rendered against the said City of New Orleans, defendant, and the said City of New Orleans having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said New York Mail Steamship Company, citing and admonishing it to be and appear
145 at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such that, if the said City of New Orleans shall prosecute *it* writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOHN T. MONROE, *Mayor.* [L. S.]
" WILLIAMSON SMITH. "
" FRANCIS SURGESS. "

Sealed and delivered in the presence of—

The above bond is approved, and the sureties accepted, in the sum of ten thousand dollars.

(Signed) E. H. DURELL, *Judge.*

Filed July 5th, 1866.

———— ————, *Clerk.*

[25-c. rev. stamp affixed & cancelled.]

Statements of facts agreed by counsel of pl'ff and def'ts, July 5th, 1866, to serve on trial in error.—Filed July 7th, 1866.

United States circuit court, sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

The following is a statement of facts proved in this case, on trial in the circuit court:

146 1st. On the first of May, 1862, the Army of the United States captured and occupied the city of New Orleans, and Major General Butler published the proclamation hereto annexed, and marked Exhibit "A," since which time the public property has been administered by the United States military authorities down to the time of issuing General Orders Number 26, referred to in paragraph numbered sixth.

2. On the 27th of June, 1862, Major General Butler approving, General Shepley, military commandant of New Orleans, organized a provisional municipal government for New Orleans, by the order No. 17, hereto annexed, and marked Exhibit "B."

3. The bureaus of finance and of streets and landings, and the mayor,

appointed under the military authority, exercised general administrative municipal powers, and legislated on all subjects pertaining to the municipal government of New Orleans. This action was known to the successive military commanders of the Department of the Gulf, from May 21st, 1862, to March 16th, 1866. (See admissions of counsel hereto annexed, and marked Exhibit "C.")

4. Captain Miller, military mayor, under resolutions of the two
147 bureaus constituted by military authority, leased, on the 9th January, 1864, to the plaintiffs, a certain portion of the bank of the River Mississippi, in front of the city of New Orleans, for a landing for their vessels, for the term of five years. (See lease and resolutions hereto annexed, and marked Exhibit "D.")

5. Hugh Kennedy, esq., military mayor of New Orleans, under resolutions of the two bureaus constituted by military authority, leased to plaintiffs, on the 8th July, 1865, for a term of ten years, a portion of the bank of the River Mississippi, in front of the city, for their exclusive use, qualified by paragraph seven of the lease. (See the license and the resolutions hereto annexed, and marked Exhibit "E.")

6. The municipal administration of the city of New Orleans was transferred, on the 18th March, 1866, by the military authorities of the United States, to a mayor and council elected by the citizens under the act of the legislature of Louisiana, 1856, known as the city charter. (See the order of Major General Canby, No. 26, dated 18th March, 1866, hereto annexed, and marked Exhibit "F.")

7. Major General Canby, commanding this military Depart-
148 ment, having been applied to by plaintiffs to approve the building of a wharf by plaintiffs, refuse' to do so. (See General Canby's endorsement of J. M. Courtenay's application, dated September the 15th 1865, hereto annexed, and marked Exhibit "G."

By the correspondence between the mayor and General Canby, introduced in evidence, it appeared that General Canby based his refusal upon the ground that the levees were in the custody of the military authorities, as captured property, and that, therefore, the city could not grants rights upon them as against the United States until they had been, by order of the Executive, restored to the city.

8. The city surveyor, aided by a large number of laborers in the pay of the city, and acting under a resolution of the com'on council, approved by the mayor, demolish' and destroyed, on the 18th April, 1866, the fence or enclosure erected by the plaintiffs at a cost of seven thousand dollars, around the premises leased to them by Mayor Kennedy. (See the resolutions of the council, approved by the mayor April 12th, 1866, hereto annexed, and marked Exhibit "H.")

149 9. Plaintiffs sued out of this court in this suit a writ of injunction prohibiting defendants from disturbing their buildings and enclosures upon the premises leased, which writ of injunction was served upon defendants after the enclosure around said premises had been destroyed. (See the record herein.)

10. The City of New Orleans, by its acting mayor, presented a petition to the third district court of New Orleans, a State court of the State of Louisiana, praying an injunction to prohibit plaintiffs from rebuilding the enclosure around the premises leased, which had been destroyed, and a writ of injunction was issued by said court, on the 21st day of April, in conformity to the prayer of said petition, which injunction was served upon the plaintiffs. (See a copy of said petition for injunction bond and writ of injunction hereto annexed, and marked Exhibit "I.")

11. Plaintiff presented and filed in this court in this suit a supplemental petition, praying for an injunction to restrain the defendants from prosecuting the suit instituted by the city in the third district court of New Orleans, above mentioned, and also from instituting any other action or proceeding which shall interfered with the exclusive use of the premises leased aforesaid, by plaintiffs. And said writ of injunction was issued by this court in conformity to the prayer of plaintiff's supplemental petition, which was served upon the mayor of New Orleans. (See the record herein.)

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12. Plaintiffs furnished their notes, 120 in number, for $666 66 each, for the rent of the premises under the lease of 8th of July, 1865, said notes falling due on the eight', eleventh, each month *month*, from August, eighteen hundred and sixty-five, to July eight, eighteen hundred and seventy-five. The first nine of these notes were paid at maturity. The ninth, due April 8th, 1866, was paid on the 11th April, 1866, to the present city administration, elected under the charter, to whom all the other notes not yet due at that date, one hundred and eleven in number, has been turned over at the transfer of the city administration from the military authority as above said. Those one hundred and eleven notes have been deposited by defendants in court, subject to the order of plaintiffs, and so remain deposited. (See records herein, also rent note hereto annexed, and marked Exhibit "K.") Those one hundred and eleven notes retained by the defendants until some months after the action was brought, when they were tendered to plaintif' by supplemental answer. No tender was made of the money paid on last note, nor was any reimbursement offered to plaintiff for the money expanded in building the wharf or other improvements.

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13. Defendant offered in evidence an order of Major General Canby, commanding this military department, No. 11, dated Feb'uary 9th, 1866, which is hereto annexed, and marked Exhibit "L," which was rejected by the court, and an exception reserved by defendants to such rejections. (See bill of exceptions on file.)

14. From acception of the lease down to the 18th day of April, A. D. 1866, the plaintiffs had remained in peaceable possession of the demise' premises, had performed all their obligations under the lease, and had, in accordance with the terms of the lease, erected a wharf and sheds, etc., at an expense of upwards sixty-five thousand dollars. No notice was given to plaintiff of the demolition, and it was performed early in the morning.

15. Under its charter of 1856, The City of New Orleans had, before the war, leased portions of its wharfs to individuals and companies, and had, in one instance, farmed out the collection of levee dues upon the entires wharves by sections.

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16. The damages resulting from the destruction of the plaintiff's buildings, etc., and the necessary employment, in consequence of this destruction, of additional watchmen, amounts to eight thousand dollars.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Plaintiffs.

" BUCHANAN & GILMORE,
Att'ys for Defendant.

Documents annexed to statement of facts.

Exhibit A, proclamation of General Butler, being document transcribed at page 68, under heading of Document 103.

Statements of facts, Exhibit B, being order of General Shepley, ap-

proved by General Butler, June 27th, 1862, being Document N, transcribed at page 51.

Statements of fact, Exhibit C, being "admission" transcribed at page No. 66.

Statement of fact, Exhibit D, being a "lease of wharf," transcribed at page 102, being Document 120.

Statement of facts, Exhibit E, "being a lease by The City of New Orleans to The New York Mail S. S. Co.," being Document C, transcribed at page 5.

Statements of facts, Exhibit F, being an order of Gen. Canby, 18th March, 1866, transcribed at page 152, being Document 111.

153 Statement of facts, Exhibit G, being Document 108, transcribed at page 80.

Statement of facts, Exhibit H, being Document 117, transcribed at page 153.

Statement of facts, Exhibit I, petition to the third district court of New Orleans, is transcribed at page 153 of this transcrip'.

Statement of facts, Exhibit K, being Document E, transcribed at page 153.

Statements of fact, Exhibit L, order of General Canby, headquarters Department of Louisiana, February 9th, 1866, prohibiting the municipal government of New Orleans, created by military authority, from alienating or disposing for a time longer than the military government of the city shall ensure, any property or franchises of the city—109, ruled out.

EXHIBIT L.

[General Orders No. 11.]

HEADQUARTERS DEPARTMENT OF LA.,
New Orleans, La., Feb'y 9th, 1866.

The several bureaux of the municipal government of the city of New Orleans, created by and acting under military authority, are enjoined and prohibited from alienating, or in any manner disposing of, the real estate or other property belonging to the city, or granting any

154 franchise or right to corporations or individuals for a term extending beyond such period as the civil government of the city may be reorganized and re-established under and in conformity to the constitution and laws of the State; and any alienation, disposition, or grant will be subjects to any rights and interest of the General Government which may be involved, and shall not extend beyond the time when the questions relative to those rights and interest may be determined by competent authority.

By order of Maj. Gen. E. R. S. Canby.

(Signed) WICKHAM HOFFMAN,
Asst. Ad'j't General.

Official:

(Signed) NATHANIEL BURBANK,
Act. Ass't Ad'j't General.

Additional facts.—Filed July 9th, 1866.

U. S. circuit court.

N. Y. M. S. S. Co.
vs.
THE CITY OF N. ORLEANS. } Additional facts.

The commerce passing through and represented by the plaintiff dur-

ing the year ending April 30th, 1860, was one sixth of the commerce of the city. The number of consignees, sixty-six thousand. During
155 the busy season two vessels arrived and depart per week, bringing and carrying from eight to twenty thousand packages each.

It is impracticable, without great additional expense, to protect this commerce without an enclosure. The lenght of the levee accessible to the commerce of New Orleans is seven miles. No more room was assigned under the lease than the company require for the commerce which they represent.

(Signed) E. H. DURELL, *Judge.*
" BUCHANAN & GILMORE,
For Defendants.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,
vs.
NEW YORK MAIL STEAMSHIP CO., DEFENDANTS.

The President of the United States to the honorable judges of the circuit court of the United States in and for the sixth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between The New York Mail Steamship Company, plaintiff, and The City of New Orleans, defendant, a manifest error hath hap-
156 pened, to the great damage of the said City of New Orleans, defendant, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifth of July, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] CH'S CLAIBORNE,
Clerk of the United States Circuit Court
for the Eastern District of La.

157 (Endorsed:) Copy of writ of error lodged in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, in pursuance the statute in such cases made and provided, this 5th day of July, 1866. (Signed) Buchanan & Gilmore, att'y for plaintiff in error. Filed July 5th, 1866. (Signed) F. B. Vinot, d'y clerk.

Petition for appeal and order allowing appeal.—Filed December 1st, 1870.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3852.

To the honorable the circuit court of the United States for the sixth circuit and district of Louisiana:

The petition of The City of New Orleans respectfully show that the final judgment rendered herein against this appearer, and signed on the 30th day of June, 1866, is contrary to law and to the evidence adduced; that the said judgment is, moreover, prejudicial to this appearer, who feels greatly aggrieved thereby; and that petitioner is desirous that an appeal be granted from the said judgment in accordance with law.

Wherefore petitioner, The City of New Orleans, prays that an appeal be allowed, returnable to the Supreme Court of the United States on the first Monday of December, 1871, upon your petitioner's giving bond with good and sufficient surety, in such sum as the court may direct,
158 and that the said plaintiff may be notified hereof and duly cited to appear and answer such appeal.

(Signed) GEO. S. LACY, *City Attorney.*

Order.

An appeal is allowed in this case as prayed for, returnable to the Supreme Court of the United States on the first Monday of December, 1871, the appellant giving bond in the sum of one thousand dollars, ($1,000,) with good and solvent security, conditioned as the law directs.

New Orleans, December 1st, 1870.

(Signed) E. H. DURELL, *Judge.*

Bond for appeal.—Filed December 3d, 1871.

Know all men by these presents that we, The City of New Orleans, as principal, and J. Hernandez and L. T. Delassize, as sureties, are held and firmly bound, jointly and severally, unto New York Mail Steamship Co., in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the New York Mail Steamship Co., its heirs, executors, administrators, and assigns; for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 3d day of December, in the year of our Lord eighteen hundred and seventy.

Whereas the said City of New Orleans has this day presented
159 a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying an appeal from a certain final decree rendered by the said court on the 30th June, 1866, in the case entitled The New York Mail Steamship Company vs. The City of New Orleans, No. 3852:

Now, the condition of the above obligation is, that we, the above-bounden The City of New Orleans and J. Hernandez and L. T. Delassize, will well and truly pay to the said New York Mail Steamship Company, the defendants in said appeal, all such damages as they may re-

cover against us, in case it should be decided that the said appeal was wrongfully obtained.

(Signed) B. F. FLANDERS, *Mayor.* [L. S.]
" J. HERNANDEZ. [L. S.]
" L. T. DELASSIZE. [L. S.]

Sealed and delivered in the presence of—
(Signed) H. CONQUEST CLARKE.
" E. L. BOWER.

Motion and order to record mandate.—Extract from the minutes November term, 1870.

NEW ORLEANS, *Saturday, March 25th,* 1871.

Court met pursuant to adjournment—
Present, Hon. W. B. Woods, presiding judge.

160 NEW YORK MAIL STEAMSHIP CO. *vs.* THE CITY OF NEW ORLEANS. } No. 3852.

A writ of error having been taken in this cause to the Supreme Court of the United States, the mandate of said court was this day filed, and, on motion of E. C. Billings, esq., att'y for plaintiffs, ordered to be recorded, and it is in the following words, to wit:

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel:

On consideration whereof it *it* is now here ordered and adjudged by this court that this writ of error be, and the same is hereby, dismissed with costs, and that the said plaintiff recover against the said defendant, The City of New Orleans, twenty dollars, for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, removed to the circuit court of the United States for the district of Louisiana.

10th December, 1869.

Mandate.—Filed March 25th, 1871.—*No.* 10, *December term,* 1869.

Supreme Court of the United States.

161 CITY OF NEW ORLEANS *vs.* NEW YORK MAIL STEAMSHIP CO. } No. 3852.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable judges of the circuit court of the United States for the district of Louisiana, greeting:

Whereas lately in the circuit court of the United States for the eastern district of Louisiana, in a cause between The New York Steamship Company, plaintiff, and The City of New Orleans, defendant, wherein the judgment of the said circuit court entered in said cause, on the 30th

day of June, A. D. 1866, was in favor of the said plaintiff, and against the said defendant, The City of New Orleans, as by the inspection of the transcrip' of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-nine, the said cause came on to be heard before the said circuit court on the said transcript
162 of the record and was argued by counsel: On consideration whereof, it is now here ordered and adjudged by this court that this writ of error be, and the same is hereby, dismissed with costs, and that the said plaintiff recover against the said defendants, The City of New Orleans, twenty dollars, for its costs herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the district of Louisiana, 10th December, 1869:

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Costs of plaintiff: Clerk, $; paid by defendant. Attorney, $20 00—$20 00. Taxed by—

(Signed) D. W. MIDDLETON,
Clerk of the Supreme Court of the U. S.

163 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 162 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The New York Mail Steamship Co. vs. The City of New Orleans, No. 3852 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 15 day of June, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

[5-c't int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 15 day of June, A. D. 1871.

E. H. DURELL, *Judge.*

[5-c't int. rev. stamp, canceled.]

164 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to the New York Mail Steamship Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein The City of New Orleans is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and seventy.

E. H. DURELL, *Judge.*

(Indorsed:) United States circuit court. No. 3852. The New York Mail Steamship Company vs. The City of New Orleans. Citation of appeal.

Marshal's return.

Received May 24, 1871, by the U. S. marshal, and, on the 12th day of June, 1871, served a copy of the within citation of appeal on the within-mentioned New York Mail Steamship Co. by delivering the same to E. C. Billings, attorney of said co., in person, (at his office, No. 82 Custom-house street, in this city,) who, on discovering the nature of this citation, refused to accept service thereof; whereupon the same was left at his said office in his presence.

New Orleans, June 12, 1871.

JAMES E. AYER,
D'y U. S. Marshal.

165 On this 12th day of June, 1871, personally appeared before me the subscriber, James E. Ayer, and makes oath that he made service of a copy of the within citation as stated in his official return hereon.

JAMES E. AYER.

Sworn to & subscribed before me.

F. B. VINOT,
D'y Clk.

(Indorsement on cover:) No. 566. The City of New Orleans, appellant, vs. The New York Mail Steamship Company. Louisiana C. C. U. S. Filed 30th September, 1871.

REC. 566—6

U. S. Supreme Court.

THE NEW YORK MAIL STEAMSHIP COMPANY, *Respondent,* vs. THE CITY OF NEW ORLEANS, *Appellant.* } *Appeal from a Decree of the U. S. Circuit Court for the District of Louisiana.*

STATEMENT.

The New York Mail Steamship Company is a New York corporation. The City of New Orleans is a municipal corporation, chartered by the State of Louisiana, March 20th, 1856.

In April, 1862, the City of New Orleans was captured by the United States military forces, under command of Gen. Butler, and, together with a portion of the State of Louisiana, was held under military occupation until March 19th, 1866, when the city was surrendered to the duly elected and qualified civil authorities.

During the military occupation the city had been governed by a military mayor, appointed by the commanding general of the Department of the Gulf, and by boards of finance and streets and landings, appointed by the same authority.

On the 8th June, 1865, Hugh Kennedy was, by the general commanding said Department of the Gulf, appointed military acting mayor of the City of New Orleans.

On the 8th July, 1865, the said Hugh Kennedy, as such mayor, pursuant to a resolution signed by the chair-

man of the board of finance and by the chairman of the board of streets and landings, the said boards having been appointed in like manner as the said mayor, executed a certain instrument, whereby he, for and in behalf of the City of New Orleans, leased to the New York Mail Steamship Company a certain portion of the levee front and landing of said city, for the *exclusive* use of said company, for the period of ten years; also granting to said company certain rights to enclose the same, and to build certain wharves, bulkheads, and buildings thereon. A rent of $8,000 per annum was reserved.

The company enclosed the premises, and erected certain sheds and buildings thereon.

On the 16th April, 1866, a few weeks after the city was surrendered by the military to the civil authorities and a civil government re-organized, the Common Council, in order to preserve unobstructed for public use the banks of the river, which are public property, passed a resolution directing the city surveyor to remove all obstructions found on the banks of the river, and pursuant thereto said officer did tear down and remove the buildings and fences erected by the said company.

The company therupon filed a bill in the court below to have the Kennedy lease adjudged a good and valid lease as against the city, and for an injunction against the city's interference, and for damages.

The important and main question in the case is the validity of that lease.

The court below adjudged the lease to be valid, granted an injunction during the term thereof, and awarded damages for the destruction of the fences and building.

The city first took a writ of error to this Court, which was by this court dismissed. On the petition of the city, the appeal of the city to this Court was then allowed.

ABSTRACT OF PLEADINGS.

The petition sets forth the lease, the occupation and erection of buildings thereunder; the intent of the city to remove the fences and buildings, and that the removal has already been commenced by the city to the damage of the company. Prayer for injunction, damages and general relief.

A copy of the lease is annexed to the petition. Record, pp. 1, 2, 3 and 4.

The answer of the city denies the execution of the lease on the ground of want of power on the part of Kennedy, military acting mayor, to bind the city by the execution thereof; that if he could bind the city at all, it was only while holding military possession, and that upon the resumption of control by the civil authorities the lease would fall.

That if Kennedy and his board possessed the charter authority the contract was void for want of compliance with the formalities required by the charter and ordinances of the city as to specifications, advertising, offers to sell at auction, adjudication, &c.

That the city itself had no power to make such a contract, as it held the premises for public use, and the same were "*hors de commerce*" pp. 8 and 9, and that the buildings were a nuisance which the city had a right to abate.

A supplemental petition was filed by the company alleging that the city, in "defiance" of the injunction herein had, caused a suit to be commenced in a State Court, and had enjoined the company from re-building the said fences, sheds, &c. That the company apprehended further suits and prayed an injunction against the city's commencing any other suits or prosecuting that one, p. 10. The injunction was granted May 7, 1866, p. 11.

May 7th, the company took a rule to show cause why the city and its then acting mayor, George Clark,

should not be punished for contempt in violating the injunction in this suit, by the commencement of the suit in the State Court, p. 12-13.

George Clark, acting mayor, answered the rule by showing that he intended no contempt, but commenced the suit to maintain the proper rights of the city, and to prevent the company rebuilding on Sunday when no suit could be commenced, p. 13.

A certified copy of the petition and injunction in the State Court were offered in evidence and filed in the court below May 12, 1866, p. 14-15.

May 14, the city took a rule that the company show cause why the injunctions in this suit should not be dissolved, and why the company should not be restrained, pendente lite from erecting buildings on the premises in question, p. 16.

May 17, by consent, the rules and the case on the merits were ordered to be heard together, p. 17.

May 24, 1866, the city filed a supplemental and amended answer, claiming that the city is entitled to have the pretended lease cancelled and brought into court to be cancelled, the notes given for the rent, p. 17.

May 30, the city filed a declinatory exception and plea to the jurisdiction of the court below to enjoin the State Court, p. 23.

ABSTRACT OF PROOFS

1. Proclamation of General Butler on the surrender of the city, of date May 1st, 1862, establishing martial law, and stating the conditions of the occupation. Record, p. 30.

2. General Order, No. 17, of General Shepley establishing the military government of the city and vesting the powers thereof in a military mayor, a bureau of finance and a bureau of streets and landings, and appointing the members of the boards, p. 22.

3. Stipulation that this military government so organized exercised generally the powers given to the municipal government under the charter of 1856, page 29.

4. Special order appointing Hugh Kennedy acting mayor of the City of New Orleans.

5. Resolution, signed by the Chairmen of the Bureau of Streets and Landings, and of Finance, and by the acting mayor, authorizing the acting mayor to lease to the company a "certain section *of the public levee*, and to enclose "the same, &c.," in Record, page 40; and the lease executed in pursuance thereof, a copy of which is annexed to the petition, page 2.

6. Refusal of Major General Canby to approve the building of a wharf by the company. Page 35, Document 108.

7. The correspondence between acting mayor Kennedy and General Canby as to the lease and the enclosing of the premises by the Company, and wherein General Canby denies the right of the mayor to make such lease, consists of four letters—1st, letter to the mayor, Document 123, p. 54, date August 23d, 1865. 2. Answer of the mayor, Doc. 124, pp. 54, 55, date August 24. 3. Letter to the mayor, Doc. 107, pp. 33, 34, date Sept. 4th, 1865. 4. Answer of the mayor, Doc. 125, p. 56, date Sept. 6th, 1865.

8. The transfer of the city government on the conclusion of the war to the civil city authorities, date March 18, 1866. General orders No. 26, p. 36 and p. 21.

9. Resolution of the Common Council to abate the nuisance of the enclosure and buildings of the company, approved April 12, 1866, p. 18 and pp. 38 and 39, No, 13 new series. The date of this resolution is evidently an error and it differs in the two copies set out in the record.

10. The city on the trial below surrendered such of the notes of the company as had not been theretofore paid, pp. 17 and 30.

The city offered in evidenee an order of the general commanding, prohibiting the leasing of wharf premises for a period longer than the military occupation, date Feb. 9th, 1866, pp. 59, 64. The evidence was excluded and the city excepted, which is alleged for error.

Testimony was also offered showing the custom of the City of New York, and other large cities, as to leasing their wharfs. The city objected; the objection was overruled, and the city excepted, pp. 59-60, which is alleged for error.

The judgment of the court below is on page 58. Its date, June 30th, 1866.

There is a statement of facts agreed by counsel for plaintiff and defendants, July 5th, 1866, to serve on trial in error, filed July 7th, 1866, p. 61, *et seq.*

POINTS.

First.—The lease was *ultra vires*, either the military or civil government. It was of property held by the city in trust for the public, for public use.

No power other than that of the State itself, could alien the rights of the public, and transfer them to an individual or company, to the exclusion of the public.

The buildings of the company constituted a nuisance, which the city could abate.

Mayor vs. Magnon, 4, Martin, La. R. 10.
Henderson vs. Mayor, 3d La., R. 563.
Municipality No. 1 agst. Kirk, 5 Annual R. La. 34.
Pulley vs. Municipality, No. 2, 18 La. R. 278.
Municipality No. 2 vs. New Orleans Cotton Press 18, La. R. 124.

In this last case says the Court, p. 227.

"The city is not proprietor of a *locus publicus*, but only administrator. It belongs as much to the citizen of Ohio as to a citizen of New Orleans. It

is a plan left open for the convenience of commerce, and for the use of the whole world—a thing *hors du commerce.*"

This same doctrine is held in New York. People *vs.* Kerr, 27 New York, 188.

SECOND.—The military Mayor and Boards had no authority to lease the property of the city.

Whatever rights or powers they possessed, terminated with the termination of hostilities, and they could no more create an interest to last beyond that time, than could a tenant for years create one to last beyond his term.

Halleck on International Law and Laws of War, pp. 446, 447 and 448, ch. 19, secs. 2, 3, 4 and 5; ch. 35, secs. 8 and 9. Ch 32 § 142 p 776 · 777 § 4 p 781

Twiss on the Law of Nations, and Rights and Duties in time of War, chap. 4, sec. 66. p 126

Phillimore, vol. 3, p. 498, secs. 583 and 584, Digest Title Rights, Private Rights, Restitution Rights of Captors. 1st Kent. Com 92 Wheaton's † 347 note 169 Title Belligerent Occupation pub. † pub 9 Pothinimi Butler Phil Ed of 1870 † Lieb. Laws Library G § [505] [791] Heffter Ed 1866 § 133 † 138 Martins Droit des Gens 80 Calvo's Droit International p 766 2nd Ed Paris

THIRD.—The judgment goes beyond the rights given by the lease. The injunction is absolute for the ten years.

The lease gives certain rights of re-entry in case of non-payment of rent, &c. At least the judgment should be modified so as to conform to the lease.

FOURTH.—The imposing of the fine of three hundred dollars on Clark, acting Mayor, was error. His

action was the assertion of a right, and in no sense violated the injunction issued in this cause. Possibly he mistook the Court to which he should have applied. But if he had applied to the Court below, the application would have been, not to dissolve or modify the injunction already issued, but for another injunction *against* the company, and in favor of the city, whether such application were made by motion or petition in this suit, or by filing a cross-bill, as might be appropriate under the practice adopted in Louisiana.

If the application to the Court below would not have been a contempt, nor an application to dissolve or modify the existing injunction, neither can it be a contempt when made to a State Court.

Perhaps a suit for that purpose would be regarded as ancillary to the first suit, within the doctrine of Freeman *vs.* Home, 24 Howard, 450, or, perhaps, as a distinct proceeding within the doctrine of Burk *vs.* Colbath, 3d Wallace, 334, but in neither case can it be called a contempt.

FIFTH.—The refusal of the Court below to admit the the order of General Canby, of February 9th, 1866, Record, p. 64, Exhibit "L", was erroneous.

Mayor Kennedy's authority depended on martial law, and was restricted by the terms of General Butler's proclamation. He was always subject to the directions of the military officers. These disapproved of, and virtually reversed his action.

The question of the date being after that of the lease, is immaterial. Martial law is not guided or controlled by constitutions. The apparent injustice to individuals of its decrees is a matter of no weight.

SIXTH.—The judgment should be reversed, and the petition of the complainant below dismissed.

WHEELER H. PECKHAM,
Of Counsel for Appellant.

Supreme Court

OF THE UNITED STATES.

THE CITY OF NEW ORLEANS,
Appellant,

agst.

THE NEW YORK MAIL STEAMSHIP COMPANY,
Appellee.

Reply Brief of Appellant.

It may be well to notice three points made by the appellee.

1*st.*—That the true construction of the lease is that it is a "commutation of wharfage," and that the acts done by the steamship company, and allowed by the lease, were within the *administrative* power of the city.

The difficulty with that theory is that the appellee did really enclose for its *exclusive occupation* a "*locus publicus.*" In so doing, it did prevent the use of such place by the public.

The lease, if valid, gave to the appellee this right,

4 "to enclose and occupy for their own *exclusive use* and benefit" a space of 600 feet on the front line of the wharf by 200 feet back (p. 3, sub. 1st).

It was to protect *such a right* that the appellee filed its bill, and it is that right and more which is given to the appellee by the decree.

Now the moment any obstruction is placed in a *locus publicus* it is a nuisance: Davis *v.* The Mayor, 14 N. Y., 524; Comr. of Pilots *v.* Clark, 33 N. Y., 256, 264, 265.

5 In this last case the remarks of the court on pages 264 and 265 are singularly applicable to this case.

The appellee concedes that in Louisiana the *locus in quo* is *locus publicus*. In other words, it is a place dedicated to public use, precisely like a highway.

If so, it is clear that no power but that of the State can *authorise* its obstruction.

The appellee cites no statute by which this power has been given to the City of New Orleans; and in the absence thereof the city could have had no power to grant the exclusive privileges given by the

6 lease.

The leases referred to by counsel for appellee as having been heretofore accustomed to be made by the City of New Orleans, had not the objectionable and exclusive character of this one. (See record, p. 45, *et seq.*) They gave no exclusive possession—allowed no obstruction.

2*d*.—That the doctrine of *post liminii* does not apply.

The appellee must and does admit that the government established by the United States was a *military* government.

This court has so regarded it: The Venice, 2 Wallace, 276, 277. 7

The government thus established was one simply of martial law. True, a mayor and subordinate officers were appointed by the military power, and in a general way instructed to administer the then existing laws. Those laws, however, derived their authority from, and were provided with, sanctions by the military power—might be modified or repealed by the simple fiat of the military commander.

No distinction, therefore, exists between the government as it was and as it would have been if administered directly by the general commanding pursuant to military orders alone. 8

The powers of this government were necessarily limited by the existence of the military occupation of which it was the creature.

The cases in 16th & 20th Howard, cited by counsel, have no application.

In those cases the conquered territory was ceded to and remained with the conquerer after peace.

It was held that, *ex necessitate*, the provisional government for California and New Mexico, established by the United States during the war, and the laws enacted by it, remained in force after peace was established until further legislation by Congress. 9

In those cases there was no relinquishment.

In the case at bar, in time of peace and under the constitution, the United States had no power or jurisdiction over the city government of New Orleans.

Sovereignty over the territorial limits of the State

10 of Louisiana was divided by *subjects* between the United States and the State.

United States *v.* Booth, 21 How'd, 506.
United States *v.* Bevans, 3 Wheaton, 388.
Pollard *v.* Hagan, 3 How'd, 223.

By the rebellion the exercise by the United States of sovereignty over the *subjects* belonging to it within the territory of Louisiana was resisted; such resistance resulted in civil war.

To overcome that resistance the United States in-
11 vaded the State, and took possession of complete sovereignty on all subjects. This it did as an ordinary war measure, and in order to enforce its right to sovereignty over certain subjects.

When its action was successful, and resistance ceased, it *relinquished* to the State government, and the State government reassumed its sovereignty of which it had been ousted during the military occupation.

This accords with the fact—Record, pp. 21 & 36—and is sound in principle.

To hold otherwise would allow the United States,
12 in every case of forcible suppression or insurrection, no matter of how slight a character, to absolutely dispose of the public domain.

If the agents of the U. S. could make this lease for ten years, they could equally well convey by absolute deed—if the doctrine of *post liminii* does not prevent the lease from lasting beyond military occupation; neither would it prevent a deed.

There can be no question but that had the city government, by authority of the military commander, conveyed these premises to this company

in fee, such a conveyance would have been good during the military occupation—but would it after? 13

3d.—The appellee claims that the city is estopped —as having ratified the lease.

Ratification applies to principal and agent. The person acting must at least *assume* to be the agent of and act for the principal; otherwise there can be nothing to ratify.

a. The city government granting the lease was not and did not assume to be the agent of the restored city government. 14

On the contrary, it was the agent of the military authorities of the United States.

Should a tenant for life make a lease in fee, surely the remainderman would not be supposed to have ratified the lease because he received a quarter's rent after the death of the tenant for life.

b. Even if the doctrine of ratification were applicable, there is nothing in the case to show that at the time of the payment of the ninth note 15 the city knew of the existence of this obstruction.

The old accustomed leases had no such clauses, and the lessees gave notes in the same manner (Record, p. 50).

The note, too, was for past due rent, and was owing even if the structure was to be immediately abated as a nuisance, for the consideration had been enjoyed.

WHEELER H. PECKHAM,
Of Counsel for Appellant.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

The City of New Orleans,
Appellant,

vs.

The New York Mail Steamship Company,
Appellee.

Brief for Appellee.

Statement of Proceedings in the Cause.

This is an appeal from the Circuit Court of the United States for the 6th Circuit and Eastern District of Louisiana.

The case was first brought here by writ of error, which was dismissed, and afterwards this appeal was taken.

The action was commenced by petition for injunction and relief to restrain the city of New Orleans from tearing down or removing the enclosures or buildings on a wharf occupied and claimed by the defendant in error under a lease, and for damages.

Case, p. 1.

An injunction was granted and served on the 18th of April, 1866; but before its service most of the buildings and enclosures were destroyed.

Case, p. 7, fol. 17–21.

The defendant answered, denying the validity of the lease.
Pp. 8–9, fol. 22.

The cause was tried before Judge Durell, sitting in Equity.
He gave judgment for the plaintiff, enjoining the defendant as prayed for, and condemning the defendant to pay the plaintiff damages to the amount of $8,000.
See Judgment, pp. 58, 67, fol. 138.

The record contains a bill of exceptions.
P. 59, fol. 139.

And a "statement of facts agreed upon, to be used on trial in error."
P. 61, fol. 146.

Also an additional statement of facts.
P. 64, fol. 154.

To the statement of facts is appended a list of documents to be taken as part of it. The documents occur in the case at the places stated.
P. 63, fol. 152.

Facts.

The plaintiff in the court below was a steamship company carrying on a trade with New York, amounting to one-sixth of the whole commerce of the port of New Orleans.

This commerce could not be protected without an enclosure, except at great expense.
No more room was enclosed and used than was required.
P. 65, fol. 155.

The army of the United States captured the city of New Orleans from the confederate government and the rebel authorities on the 1st of May, 1862. On the 27th of June, 1862, the commandant of New Orleans, with the consent and approval of the general commanding the department, organized a government of the city of New Orleans.
Fol. 51, p. 22.

The head of the government was a military officer, called acting-mayor, until in 1865, Mr. Kennedy, a civilian, was appointed mayor.

Fol. 48, p. 20.

From the time of this capture and military occupation, the public property was administered, and the muncipal government carried on for about four years by the military authorities, and by officers acting under them, until the State was reconstructed, loyal or pardoned men were found for the city offices, and the government surrendered to their hands by a general order of Major-General Canby, March 18, 1866.

P. 36, fols. 83–88.

The bureaus of streets, &c., and the military mayor exercised all general administrative and legislative powers on all subjects of municipal concern, with the knowledge and sanction of the military commandant.

P. 61, fol. 146; p. 22, fol. 51–54.

The city of New Orleans, under its charter of 1856, had, before the rebellion, leased its wharves and farmed out levee dues.

P. 631, fol. 152; p. 45, fol. 103.

On the 9th of January, 1864, the then military mayor, with the sanction and direction of the bureaus of the city government, leased to the New York Mail Steamship Company for five years the right to use and enclose and collect levee dues on a portion of the levee front.

P. 41, fol. 95; p. 62, fol. 147.

On the 8th of July, 1865, Hugh Kennedy, military mayor, under the direction of the bureaus of the city government, leased to the New York Mail Steamship Company, the appellee, a portion of the levee front, including that covered by the lease of 1864, and more, for ten years. The company was to have its exclusive use for their own vessels, but not to receive the dues from other vessels. They were authorized to enclose the wharf and to build sheds. They were to pay a rent of $8,000 per annum, monthly, and gave 120 rent notes due on the 8th of each month, for $666.60 each.

Pp. 2, 3, 4, fols. 6–14; p. 61, fol. 147.

The company took possession of the wharf, erected sheds and buildings at an expense of $65,000; and the fence or enclosure, which the defendants demolished, which cost $7,000.

Pp. 62, 63, fols. 147, 151.

The company paid eight of the rent notes at maturity to the mili-

tary mayor and city government, *and paid the ninth note on the 11th of April, 1866, to the city administration elected and suffered to take possession of the government.* The 111 other notes were transferred with the one thus paid by the military to the elected city officers. The company remained in quiet possession until they were interfered with by the defendants, April 18th, 1866, a few days after they had accepted a month's rent.

P. 63, fols. 150, 151.

On the 18th of April, 1866, after they had received rent from the appellee, without any notice to the latter, and without any demand for possession of the premises, the city surveyor, acting under orders of the mayor and common council, suddenly and forcibly entered on the premises early in the morning, and destroyed the enclosure erected by the appellee.

P. 63, fol. 151.

After this suit was commenced, the city, by supplemental answer, tendered the rent notes not yet due and brought them into court.

But no tender was ever made of the money paid and received April 11th, 1866, nor of the money received on the former rent notes by the military government of the city; nor was any reimbursement offered of the expenditures made by the company on the property.

P. 63, fol. 151.

The damages inflicted by the acts of the appellants are found by the judge to have been $8,000.

POINTS.

I.

There are three exceptions stated in the bill of exceptions. (Case, p. 57, fol. 138.) All of these are untenable or insufficient to justify any interference with the judgment.

1. The order of General Canby, dated Feb. 9, 1866, which was excluded (p. 64, fol. 154), was immaterial to this controversy.

(a.) It was made nearly a year after the lease made to the ap-

pellee; and it was not competent for the military authorities to destroy or interfere with vested rights acquired by contract with a civil government established and exercising *de facto* authority, as a civil and not a mere arbitrary power. Even if military or martial law would justify an act subversive of existing rights or contracts, because it is the mere exercise of military power, the city of New Orleans was not then governed by mere martial law. The government established by the orders of the military commander was a civil government, set up as a necessary substitute for the former disloyal officers of the city. Although this government might have been displaced or destroyed by the power which raised it, its acts during its existence were like those of any other actual government exercising legal authority; and equally beyond the exercise of arbitrary power.

(b.) But the order of General Canby did not attempt or propose to affect past acts of the city government. It only assumed to lay down a rule for their guidance in the future.

It could not, therefore, as it did not attempt to have any effect upon previous acts and contracts, and hence was wholly immaterial in this case.

II.

The evidence of Courtenay as to the extent of the trade and commerce carried on by the plaintiff below (appellee) was offered and received without objection.

It was offered to show the necessities of the appellee for room and protection to property, and the damage to it by the violent acts of the city authorities (see fol. 155, p. 65), and not the advantageous character to the city of the lease in question.

The evidence offered by the appellant from Monroe & Clark was not competent evidence in chief, nor was it in contradiction of any statement of the witness Courtenay. It seems to have been suggested to contradict not the evidence given by Courtenay, but some supposed inference from his testimony.

III.

The evidence of the custom of leasing wharves in New York and other cities was so remote that it could not affect the case.

The defense did not rest on any law of Louisiana. The only practice which was in question was the custom or practice of the city of New Orleans. It was agreed that it had been the custom of that city to lease its wharves and farm its levee duties. (Statement of Facts, fol. 152, p. 63.) This was sufficient and conclusive, and the evidence of a similar practice in other cities was at most surplusage.

The effect of this evidence was only to show that the city of New Orleans followed the practice of other cities.

IV.

None of the exceptions, however, we submit, are the subject of review by this court. The statement of facts is like a special verdict, or a case made subject to the opinion of the court, and rulings as to evidence are not receivable.

Suydam *vs.* Williamson, 20 How., 427.
Campbell *vs.* Boyreau, 21 How., 223.

This court is bound in cases brought from the courts of Louisiana, where the trial has been had before a judge without a jury, to treat a statement of facts made by consent as a special verdict.

At the very utmost, the only effect of an improper admission of evidence in such a case would be that the court would reject the evidence and proceed to examine and decide the cause without it, as if it were not in the record. Its admission would "be no ground for reversing the judgment," if without the particular evidence there was evidence enough to sustain it.

Field *vs.* The U. S., 9 Pet., 202.
The U. S. *vs.* King, 7 How., 833, 844, 853.

The "bill of exceptions" is out of place in this record. It was made up and inserted in a record which was made when the case was brought here upon writ of error. Exceptions will not be considered upon an appeal. This was a suit in equity, and the court will look at the whole case upon the evidence and the offers, and decide it. Even if the parties were not concluded, as they are, by the statement of facts, upon all the points affected by these offers, the admission of

improper or rejection of proper evidence would not compel the court to reverse the judgment, unless it was wrong in law and would have been controlled by the evidence rejected, or was controlled by that admitted erroneously. No such case is presented here.

V.

The question in the case is, whether the plaintiffs in the court below were entitled to the judgment of the court for damages as given by the judge before whom the cause was tried upon the facts stated.

The *amount* of damages to the plaintiffs below is admitted and agreed to by the statement of facts. The wharf and sheds erected by the company cost $65,000 (fol. 151). The enclosure actually demolished by the city officers cost $7,000 (fol. 148), and the damage by its destruction and the increased expense of watchmen, etc., consequently incurred was $8,000 (fol. 152).

The court entertained the action to stay or prevent the demolition of the structure, and properly retained it to award damages, when it turned out that a portion of the buildings which we sought to protect had been destroyed before the process of the court could reach them.

VI.

The city of New Orleans was incorporated February 17, 1805.
See Bullard & Curry, Dig., Vol. 1, 92.

An act amending this charter was passed March 14, 1816.
See Ib., p. 100.

By this act the mayor and council were authorized to make by-laws to secure the safety and convenience of passing into the levees, and to fix the place and the anchoring for ships and water crafts in the city of New Orleans.
Ibid.

By an act passed March 8, 1836, the city was divided into three municipalities, each a separate corporation, with distinct municipal powers.
Laws La., 1836, p. 28.

By section 20 of this act the councils of the three municipalities were to meet in joint meeting and constitute a "city council." This city council was given power, among other things, to fix a uniform rate of wharfage to be paid by the ships, steamboats and other crafts mooring in front of all parts of the city.

See Laws La., 1836, p. 28.

By an act passed March 20, 1840, provision is made for dividing the wharfage among the municipalities, where a vessel is moved from one municipality to another.

By an act passed February 23d, 1852 (see Laws of Louisiana, 1852, p. 42, No. 71), these separate municipalities were abolished, or consolidated into the city of New Orleans. This charter was in force in 1864–5.

By sections 22–36 of this act all rights of property of the city and of the municipalities were vested in the city as reorganized, and all powers of the municipalities and of the general council, as existing under former laws, were vested in the city of New Orleans, as established by that act.

The banks of the Mississippi, and the levees in the rest of the State, are under the charge and control of the police juries, but their powers, and the rules applicable to the river banks and levees in country districts, are expressly restricted so as not to limit or restrict the control of their own ports by cities and towns.

Act of February 15, 1808.

The parish of Orleans is excepted generally from the police jury law (Laws of 1847.)

Digest Laws of La., 1870, vol. 2, p. 332.

Under these laws and by this authority the city of New Orleans passed ordinances fixing the levee dues or wharfage, which vessels must pay to be allowed to moor at the levees or wharves of the city.

Case, fol. 89, fol. 125.

It had also farmed out the collections of those levee dues.

Fol. 152.

And it had regulated by its officers, and in some instances by leases or assignments of certain portions of the river front for definite periods, the use of the wharves or levees in front of the city.

Case, fol. 152; Statement of Facts.

VII.

The first "lease," so called, to the appellee (Case, fol. 95) was a transfer to the appellee of the wharfage dues to be collected from a certain portion of the river front, and the right to enclose the same in a manner satisfactory to the city surveyor.

The second instrument, which is the one now in question (fol. 6), purports to give the appellee the right to enclose the same with additional space, and use it for its exclusive benefit according to a plan filed with the city surveyor. Buildings and sheds necessary for commerce were permitted to be constructed within the enclosure. The wharves were to be repaired and kept in repair by the company.

The city received a sum of $8,000 per annum, payable monthly, for the use of these wharves by the company in lieu of wharfage or levee dues.

But all wharfage chargeable to the vessels of other parties using the premises were to be collected by, or paid to, the city, and no river steamboat should load or unload there. While if any of the company's vessels used any other wharf they should pay the customary wharfage.

VIII.

The commerce of the appellee was one-sixth of the commerce of the city. There were in 18 0, 66,000 consignments by their vessels. The company received and dispatched two vessels a week, carrying from 8,000 to 20,000 packages each.

This commerce could not be protected without an enclosure, unless at great additional expense. The company occupied and required for its commerce all the room enclosed, and the only difference made by the enclosure, practically, was to enable the company to dispense with numerous watchmen.

See additional facts agreed on, Case, fols. 154, 155.

The enclosure was furnished with openings.

See Plan O.

It did not extend to the street in front of the levee, and it did not exclude the public from passing over the levee, or from access to the rivers, nor other vessels from using the levee, subject only to the preference assigned to the appellee.

IX.

This is not a question between the Steamship Company and some person who has been interfered with, or prevented from using the levee or wharf in question. The city authorities assumed that this enclosure, with its gates and openings, was a nuisance, and undertook to abate it as such. There was no finding and no proof at the trial of injury to any one, of exclusion of any one, of complaint by any one; there was no proof of anything, except merely its existence and extent of the enclosure, and, at the same time, of its utility and necessity for purposes of commerce. It was a mere protection of property in transit, and there was no proof that property remains there, except during its brief period of transit.

The city authorities could not make a thing a nuisance, or justify themselves in abating it as such by merely declaring it so. To justify their action, they were bound to prove to this court that it was a nuisance.

Rogers *v.* Barker, 31 Barb. N. Y. S. C. R., 447, and cases cited.

X.

The true construction of this instrument is, that it is a commutation of the wharfage for the use of the wharf by the company's vessels for a definite annual sum, with a reservation of the wharfage from other vessels to the city and the assignment of this space to this company for its use in preference to all others, and a grant of a privilege of protecting its commerce with enclosures with suitable openings, instead of personal guards.

The public and other vessels were not to be excluded and are not shown to have been excluded, except when the company were using the wharf.

Such designations and permissions, whether called leases or not, are customary if not necessary, and such instruments have been so construed in the great port of New York.

Taylor *v.* Mayor N. Y. (Opinion by Judge Woodruff), 4 E. D. Smith, 559.

Mayor N. Y. *v.* Rice, ib., 604.

Commr. Pilots *v.* Clark, 33 N. Y., 251.

XI.

The banks of public rivers are, by the civil law, subject to public use, because they are dedicated to commercial purposes.

In a great city like New Orleans, the municipal authority may be regarded, and must act as the trustee of the public.

There is a difference in the character and extent of rural and urban dedications and servitudes.

Cincinnati *v.* White, 6 Pet., 431.
People *v.* Kerr, 27 N. Y., 188.

The city may regulate the use of levees or landingsfor commercial purposes, and assign to particular vessels their place, and allow them to shelter and protect their immense cargoes while in transit.

See Municip. No. 1 *v.* Kirk, 5 [illegible] La. Ann. 34

XII.

This "lease" was a legitimate and proper exercise of the power of regulation of commerce.

The fence which was demolished was a structure necessary to protect commerce.

The occupation, by parties carrying on one-fifth of the commerce of the port, of no more than was actually and constantly needed, under municipal authority, was not like the appropriation of a part of the shore by a private person for a shop or for business not connected with commerce.

There was here: 1. No obstruction or hindrance of the public use or rights proved—those rights being not a mere right of passage, but a right of commercial use. 2. There was no withdrawal of this ground from commerce or its uses.

The cases cited by the counsel for the appellants are cases of appropriation of river banks by individuals without public authority or sanction to uses not commercial, and not shown to be obstacles to the uses of commerce.

Many are also cases of banks of streams in rural regions where none of the questions which the necessities, the conditions, the police and the commerce of a city introduce.

XIII.

The lease made by Mayor Kennedy, July 8th, 1865, to the New York Mail Steamship Company, was valid and binding upon the city of New Orleans, and upon any succeeding authorities thereof, for the time of its duration.

(*a.*) Louisiana, in May, 1862, when the city of New Orleans was occupied by our troops, was in a state of war, and wholly under rebel dominion.

The city of New Orleans, its authorities, and its citizens, were defiantly and flagrantly rebellious. They refused to acknowledge or to act under the authority of the United States.

(*b.*) The military authorities, therefore, for the purpose of "adequate protection for life and property," established a temporary or provisional administration of the government of New Orleans.

They had the right to do this, or to govern a country thus captured from an enemy by simple martial law.

In pursuing the milder course, and appointing officers to administer the government according to the municipal law of the State, the United States Government were clearly acting within their power as captors or recaptors of a portion of their territory which had been forcibly wrested and violently withheld from their jurisdiction.

(*c.*) Until this condition of things was terminated, and the State and all its subordinate municipal and civil divisions reinstated by Congress, the officers exercising jurisdiction by military appointment were lawful as well as *de facto* governments in their various spheres, municipal and other.

(*d.*) These officers in the city of New Orleans preserved at least all the powers appertaining to the offices they were appointed to fill. There were no loyal men to elect so as to fill these offices. As a matter of necessity and duty to the people who had been subjected, some government must be given them. As a grace and favor to them, that government was not martial law, but an administration of their own municipal institutions by the only men competent to administer them.

See the *Venice*, 2 Wallace, 258.

Act to provide for the more efficient government of the Rebel States, passed March 2, 1867.

Act supplementary to the same, passed July 12, 1867.

Leitensdorfer *vs.* Webb, 20 How., 176.

XIV.

If the military authorities had power to fill the necessary offices, and constitute the necessary government for the city, the officers thus appointed were limited in their power and authority only by the functions of the offices which they were designated to fill.

That the government of the United States had a right to fill these offices, and thus organize a government, results from public law and the law of war; the principles on which such action proceeded have been recognized by this court.

Leitensdorfer *vs.* Webb, 20 How., 170.
Cross *vs.* Harrison, 16 How., 164.

XV.

The governments thus rightfully established in the recaptured territory did not cease when armed resistance was over. They continued until withdrawn or suspended by the sovereign power. As long as the State of Louisiana was not restored to the Union, and its citizens were not relieved from their disabilities, the officers and authorities established by the sovereign power of the United States were the lawful and the only government of the State and city.

Cross *vs.* Harrison, Q. S.
Leitensdorfer *vs.* Webb, Q. S.

XVI.

Leasing this wharf to the New York Mail Steamship Company was within the recognized powers, and according to the admitted practice of the city government of New Orleans during all its history.

It was an act wise and beneficial for the promotion of commerce, as well as such an act as the city government was accustomed to do.

Case, pp. 73–75.

XVII.

The New York Mail Steamship Company took the lease from the actual and legally constituted government of the city, and on its faith expended not less than $65,000 on the demised premises.

Case, p. 73, fol. 199.

XVIII.

The order of General Canby, dated February 9th, 1866, prohibiting for the future alienations of municipal property or franchises by the officers appointed by military authority for a period extending beyond the reorganization of the State and city, recognizes the fact and rightfulness of such grants made before the date of the order. Every implication from that order is in our favor. By its express terms it does not reach us.

Case, p. 74, fol. 203.

XIX.

There is nothing like *post liminum* here, in fact or fiction, or by analogy.

If this had been the case of a conquered country, held under our sway four or five years, and then restored to its original government and people, the alienation of its public domain to citizens of the conquering country, made while it was under our dominion, could not be rightfully annulled or recalled by the restored government.

Phill. Intern. Law, I., p. 288.

Whea. Intern. Law, § 347, p. 438; Mr. Dana's Note.

But there has been no recapture or relinquishment by the United States. In allowing the people of the State who have purged themselves of complicity in the rebellion to resume the government of the State, the United States simply permits them to succeed to the administration of the government, as it has been restored and established by military power, and with the sanction of Congress, and not to supersede that government by a new or a restored government of their own.

The municipal governments, now existing and exercising authority

in Louisiana and New Orleans, are a succession and continuation of the governments established by the United States through its military power, and not of the rebellious authorities existing before the conquest.

The period of military sovereignty is not to be regarded as an interregnum, but as the beginning of a restoration.

XX.

The city of New Orleans and its present authorities are barred and estopped from denying the validity of the lease, and from any defence to this action.

They made no offer to return the rent notes until long after they invaded our possession, and after this suit was commenced.

They have never offered to return the money paid to take up our first eight notes, nor the money expended by us on the premises.

But what is absolutely conclusive as a ratification of this lease, the city, after its rehabilitation, and after the United States authorities had surrendered all control of its affairs and resigned its offices to officers elected by its citizens, *accepted rent from us on the lease.*

The very same functionaries who violently and without notice attacked and destroyed our property on this wharf, only a few days before received from us rent under the lease under which we held it, given by their predecessors in the name of the city.

Case, p. 73, fols. 197–8.

This was a complete ratification of the acts of the military mayor and bureaus, if any were needed.

Leasing the pier was within the corporate power of the city. The utmost that could be claimed against it would be that it was done by an unauthorized agent. Such an act can be ratified, and the acceptance of rent was a ratification.

Story on Agency, § 239, 252.
2 Kent. Comm., 291.
Bank of Columbia *v.* Bateman, 7 Cranch, 299.
Bank U. S. *v.* Dandridge, 12 Whea., 74.
Perkins *v.* Wash. Ins. Co., 4 Cow., 645.
Am. Ins. Co. *v.* Oakley, 9 Paige, 496.
Magill *v.* Kauffman, 4 Serg. and R., 317.
Randall *v.* Van Vechten, 19 J. R., 60.
Peterson *v.* Mayor N. Y., 17 N. Y. R., 449.

XXI.

In any possible aspect of the case the city authorities had no right, without notice or demand or legal proceedings, to enter on our possession and destroy our property.

XXII.

The judgment of the court below should be affirmed.

JAMES EMOTT,
Of Counsel for Appellee.